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VOL. XLI., No. 10.

The Solicitors' Journal and Reporter

LONDON, JANUARY 2, 1897.

*** The Editor cannot undertake to return rejected contributions, and copies should be kept of all articles sent by writers who are not on the regular staff of the JOURNAL.

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CURRENT TOPICS.

WE PRINT elsewhere an order of the Board of Trade altering the distribution of debtors' estates among the official receivers of the High Court.

IT SEEMS rather late in the day to raise the question whether a solicitor is personally liable to a witness whom he subpœnas for the expenses of such witness. We have always supposed that the question was settled half a century ago by *Robins* v. *Bridge* (3 M. & W. 114) and *Lee* v. *Everest* (26 L. J. Ex. 334); and that the solicitor is not personally liable unless he chooses to expressly bind himself to pay such expenses. The question, however, appears to have been recently raised at the Windsor County Court; and Sir ALFRED MARTEN naturally decided it in accordance with the authorities we have mentioned.

THE STATUTES of last year which came into force on the 1st inst. are only five in number, and none of them are of first-rate importance. The Friendly Societies Act, 1896, is a consolidating Act, and, without making any change in the law, reproduces with improvements in arrangement and in drafting the provisions of the Act of 1875 and the subsequent amending Acts. The Collecting Societies and Industrial Assurance Companies Act, 1896, contains in a separate statute provisions which have hitherto formed part of the Friendly Societies Acts. The Diseases of Animals Act, 1896, requires, with certain exceptions, the slaughter of all foreign animals at the port of landing, and the Stannaries Court (Abolition) Act, 1896, provides for the abolition of the Court of the Stannaries and the transfer of its jurisdiction to such county courts as the Lord Chancellor directs. The Truck Act, 1896, prescribes the conditions under which an employer may stipulate with his workmen for deductions or payments in respect of fines, damaged goods, or the supply of materials, tools, &c. It may be noticed that the Judicial Trustees Act, 1896 (except section 3), does not come into operation till the 1st of May next.

PUBLIC IMPATIENCE of due process of law is well illustrated by a paragraph in the *Times* of the 30th ult., headed "Legal

Intricacies." The first sentence, which shews the subject, and (from the writer's point of view) the moral, of the litigation referred to, runs thus:

"A curious instance of the absurd length to which the intricacies of the law may be carried has been recently afforded by the litigation, just terminated, which arose in connection with the will of the late Mr. W. F. WALLER, of Gravesend, under which the Lord Mayor for the time being derived the munificent bequest of certain bank shares of the value of between £9,000 and £10,000 for the benefit of hospitals for seamen."

So far the *Times*. The validity of the will was contested, and the legatee in trust not being indicated with sufficient clearness to induce the executors to part with the considerable sum involved, it was left to the court to decide to whom the legacy was to be transferred. Pursuant to an arrangement made in court, the present Lord Mayor, the third holder of that office since the testator's death, was the actual transferee of the legacy. These would appear to have been the substantial facts. The circumstances are somewhat curious, but where, one is tempted to ask, do the "intricacies of the law" come in? The will was evidently ambiguous in its terms. It is not suggested that the litigation was improper. Are not the "intricacies" illustrated rather those of circumstances and of human nature, and is it the function of the law to cut the Gordian knots with which testators so frequently tie up their munificent bequests, or to patiently disentangle the threads—a process which necessarily takes time?

WHEN THERE is a contract for the sale of specific goods the general rule, as laid down by section 17 of the Sale of Goods Act, 1893, is that the property in the goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred, and for the purpose of ascertaining this intention regard is to be had to the terms of the contract, the conduct of the parties, and the circumstances of the case. But when all these matters have been taken into consideration there is still plenty of room for doubt as to the common intention of the parties with respect to a point upon which they very frequently have no clear intention at all; and section 18 goes on to provide special rules for ascertaining the intention where it does not specifically appear. Among these it is provided that when goods are delivered to a buyer on approval, or "on sale or return," or other similar terms, the property therein passes to the buyer when he signifies his approval or acceptance to the seller, or does any other act adopting the transaction. An actual intimation of acceptance makes the matter simple enough. A contract which has previously been conditional thereupon becomes complete, and the rule merely expresses the natural result. So, too, when the buyer by any act adopts the transaction; but here there is room for difference of opinion as to what amounts to an adoption, and in *Kirkham* v. *Attenborough* (*ante*, p. 141) the Court of Appeal have overruled, on this point, the decision of GRANTHAM, J. The plaintiff, who was a manufacturing jeweller, delivered articles of jewellery to one WINTER "on sale or return." WINTER gave no intimation of his election to keep or return the goods; but he proceeded to pledge them with the defendant. In this GRANTHAM, J., saw no act adopting the transaction of sale; but the pledging was clearly a disposition of the jewellery upon which WINTER represented himself to be the owner, and, moreover, it put an end to his unfettered power to return the jewellery to the plaintiff. Hence the Court of Appeal held that the pledging was an act by which the sale was adopted, and, the property having thus passed out of the plaintiff, he had no title to recover the articles.

THE TERMS of the lease proposed to be granted by the London County Council to the North Metropolitan Tramways Company of the lines of that company purchased by the council contain at least one provision the like of which we imagine has never yet been seen in a lease. It is proposed that the company shall covenant with the County Council

"To make no increase in the hours of labour and no reduction in the rates of wages [of the *employés*]; such hours of labour shall not now, or at any future time, exceed, or the rate of wages fall below, those observed by any of the following companies in the County of London—viz., the London Street Tramways Company, the London Tramways Company, the London, Deptford, and Greenwich Tramway Company, and the South London Tramways Company. Such hours of labour and rates of wages to be shewn in a schedule to be approved by the Council before the agreement is entered into Provided that no *employé* of the company shall work on the average throughout the year for more than six days in each week";

and the lease is to contain a proviso for re-entry in the event of breach by the company of this or any of the other covenants in the lease. We remember to have seen in an old North-country agricultural lease a covenant by the tenant that he would at all times keep at his own cost two sporting dogs for the landlord, with a proviso for re-entry on breach thereof; but we do not recall any instance of an attempt by an eccentric lessor to regulate the rate of wages or hours of labour of the workmen employed by the lessee. These have hitherto been considered matters with which the lessor has no concern, and which, even if the lessor attempted to regulate them, would be ultimately determined by the law of supply and demand. It should be noted that the proposed terms do not include any provision requiring the tramway company to provide clean and comfortable vehicles for the public; the interests of the greater number of the constituents of the County Council are subordinated to an inane attempt to regulate the price of labour.

IN THE RECENT CASE of *De la Rochefoucauld* v. *Boustead* the Court of Appeal reversed the decision of KEKEWICH, J., and established a parol trust of the proceeds of lands in Ceylon sold so long ago as 1873. The lands formerly belonged to the plaintiff, the Comtesse DE LA ROCHEFOUCAULD, and were by her mortgaged to a Dutch company. In 1873 they were conveyed to the defendant in consideration of some £58,000, the amount due on the mortgage; but this conveyance the plaintiff has alleged was really made to him upon trust for her. Being, however, apparently the absolute owner of the property, the defendant mortgaged it and then sold it, and upon his bankruptcy in 1879 his trustee in bankruptcy repudiated the plaintiff's claim. The defendant, on the other hand, did not expressly repudiate it, and, if he was a trustee for the plaintiff, his discharge in 1880 did not, under the Bankruptcy Act, 1869, release him from liability under the trust. The action to enforce the trust was not commenced till 1894, and the plaintiff then asked for an account of the proceeds of sale, but she had to meet the difficulty of the want of writing to prove the trust and of the lapse of time. In spite, however, of section 7 of the Statute of Frauds, which enacts that trusts of land must be evidenced by writing, the first difficulty was not necessarily fatal. The Statute of Frauds is not allowed to be made an instrument of fraud, and the court, in its tenderness for *cestuis que trust*, has said that the denial of a trust created by parol is in itself a fraud, for which the protection of the statute will be sought in vain. This, at least, is the later view (*Lincoln* v. *Wright*, 7 W. R. 850, 4 De G. & J. 16; *Haigh* v. *Kaye*, 20 W. R. 597, 7 Ch. 469; *Davis* v. *Whitehead*, 42 W. R. 456; 1894, 2 Ch. 133), although formerly some actual fraud, in addition to the mere denial of the trust, was required (see *Leman* v. *Whitley*, 4 Russ. 423). The Court of Appeal, accordingly, in the present case, allowed that parol evidence in support of the plaintiff's claim had been properly admitted, and upon the evidence they held—differing from KEKEWICH, J.—that the trust had been established. The *laches* of the plaintiff, also, though it was a circumstance against her, was successfully met. The trust, although not declared in writing, was nevertheless an express trust in the sense that at the time of the sale to the defendant both he and the plaintiff understood that a trust was to be created, and against such a trust the Statute of Limitations (save by virtue of the Trustee Act, 1888, which in the present case did not apply) does not run. Hence the Court of Appeal declined to alter the rule by allowing mere *laches*, apart from any other circumstance, to be a bar, and as the plaintiff had not in any way induced the defendant to believe that she had abandoned her claim, the trust was held to be enforceable, and an order for an account was made.

WHERE PROCEEDINGS are taken before a court of summary jurisdiction in order to recover a rate, is the rate-book conclusive as to the validity of the rate, or may such validity be inquired

into by the justices? That is the question which was before the Divisional Court some little time ago in the case of *Roberts* v. *The Overseers of Clowne*. The Parish Council of Clowne had adopted the Lighting and Watching Act, 1833, and a rate was made under the Act, allowed by two justices, and duly published. The appellant gave no notice of appeal against his rating, but on failing to pay was summoned, and the justices ordered a distress warrant to issue for the amount. Against this order the appellant appealed to quarter sessions, and it was argued on his behalf that the rate was not legally made, as certain statutory conditions precedent to the adopting of the Lighting and Watching Act had not been observed. For the respondents it was argued that the rate was good on the face of it, and that neither a court of summary jurisdiction nor of quarter sessions on appeal therefrom was entitled to go behind the rate or to inquire whether the prescribed formalities had been observed. The court of quarter sessions allowed the appeal (subject to a case stated), being of opinion, on evidence which had been admitted, that the statutory provisions had not been complied with. They based this decision on *Reg.* v. *Reynolds* (1893, 2 Q. B. 75, 62 L. J. M. C. 120). The High Court, however, were of opinion that that case is not correctly reported in the *Law Reports*, and as reported is misleading. The facts in that case were almost identical with those in the recent case, and it was held that the justices were bound to issue a distress warrant. In the *Law Reports*, however, in the report of the judgment, the following sentence occurs: "Until the contrary be shewn, there is a presumption that the Act was properly adopted." The inference from these words clearly is, that the contrary *may* be shewn. The court, however, would not indorse the report with these words, but were apparently of opinion that *Reg.* v. *Reynolds*, as reported in the *Law Journal*, is good law. The effect of that case is clearly given in 41 W. R. Dig. 126, thus: "Held, that, upon proof by the overseers of their being required to levy the rate by the inspectors purporting to be appointed under the Act, and of the fact of the rate being in arrear, the duty of the justices was ministerial; and that a *mandamus* to issue the distress warrant must go." In the recent case, unfortunately, the court did not expressly decide the point in question, as the Court of Quarter Sessions had held that the rate was bad on a certain ground which, in law, did not invalidate the rate; so that their decision was wrong in any case. It is submitted, however, that the law, as it was really laid down in *Reg.* v. *Reynolds*, is correct, and that the rate-book is conclusive, as far as the justices are concerned, on the question whether or no the making of the rate is valid. If a person has any objection of this sort to raise, he must appeal against the rate in the ordinary way. If he neglects to do this, he cannot raise the question of the validity of the rate when summoned for neglecting to pay it. A person summoned for a rate may, however, prove before the justices that he as an individual ought not to be on the rate-book at all, though he cannot impugn the validity of the rate as a whole. This was decided by the High Court in *Reg.* v. *Simmons* (Ryde's Rating Appeals, 1891-93, 316). In that case a person who claimed to be a mere caretaker of a certain house was put on the rate-book. He did not pay and was summoned, and a distress warrant issued, the justices being of opinion that they had no right to go behind the rate-book, as there had been no appeal against the rate. The High Court, however, decided that the justices ought to have considered the evidence tendered, that the appellant was not the occupier nor legally on the rate-book, and the matter was referred back to the justices to determine whether or no the appellant was the occupier.

THE CASE of *Osborn* v. *Wood* (*ante*, p. 143) affords a good example of inconsistent Acts of Parliament. The respondents had been convicted, before the justices of Bury, in Lancashire, of a first offence under the Cotton Cloth Factories Act, 1889, and had been fined twenty shillings. Section 13 of that Act provides that in such a case the penalty shall be, for the first offence, "a penalty of not less than £5 nor more than £10." The magistrates, however, considered that, under section 4 of the Summary Jurisdiction Act, 1879, they were justified in reducing the fine below £5, as that section provides that, "notwithstanding any enactment to the contrary, where a court of summary jurisdiction has authority under this Act or under any other Act, *whether past or future*," to impose a fine for a first offence, the court may reduce the prescribed amount of such fine. The appellant, an inspector of factories, objected to this decision, and the question laid before a Divisional Court was whether the magistrates were right in their view of their powers, or whether they were bound to inflict a fine of at least £5. The two statutes are obviously inconsistent; but to support the view of the magistrates would be to make the words in the latter statute, "not less than £5," absolutely meaningless. It is not easy to see how the judges could have come to any other conclusion than they did come to—viz., that the provision of the Summary Jurisdiction Act cannot affect any specific enactment to the contrary in a subsequent Act. In statutes which impose penalties, passed before the Act of 1879 became law, instances occur in which a maximum penalty is named; and there may also be found instances in which all discretion as to the amount of a fine is taken from the magistrates and a fixed sum is mentioned as the penalty for a certain offence. Of recent years, however, it is almost invariable for a statute which imposes a penalty to merely fix a maximum sum, and to provide that the offender shall be liable to a penalty "not exceeding" that maximum. This is so much a matter of course that any departure from the recognized form of words, as in the Cotton Cloth Factories Act, 1889, must be taken to express a deliberate intention on the part of the Legislature. It seems impossible, therefore, to doubt that the court was right in holding that the Act of 1889 does to a certain extent repeal the Act of 1879. Repeal by implication is, however, a clumsy mode of legislating, and generally causes trouble, though lawyers are not the persons to complain of this trouble. The question has usually to be settled sooner or later by the courts whether or not the two apparently inconsistent Acts are really inconsistent, or whether they are capable of being read together, as the courts are bound to read them if it is reasonably possible to do so. As FIELD, J., once said, "repeal by implication is never to be favoured; it is no doubt the necessary consequence of inconsistent legislation whenever it occurs, but which must not be imputed to the Legislature unless absolutely necessary." Obviously it is absolutely necessary when otherwise words in the later Act would have to be ignored.

THE RIGHT TO REMOVE FIXTURES.

IT is an ancient rule of law that a chattel upon being affixed to land loses its character of personalty and becomes part of the land. The result is that the owner of the chattel loses his right of property in it, and, except under special circumstances, he is not allowed to reclaim the chattel by severing it from the soil. These special circumstances have been admitted to exist in various classes of cases—notably as between landlord and tenant—but the recent decision of the Court of Appeal in *Hobson* v. *Gorringe* (reported elsewhere) shews that the recognized exceptions from the general rule are not to be lightly extended. The plaintiff in that case was the owner of a gas engine which by an agreement in writing, but not under seal, he had let to a builder named KING for the purpose of being fixed upon land at Worthing of which KING was owner in fee. The agreement was for hire and purchase, the terms being that KING should pay £18 in cash before delivery and a monthly instalment of £3 10s. for ten months. So long as the instalments were unpaid it was stipulated that the agreement should operate as an agreement for hire only, and in default of payment HOBSON was to be at liberty to remove the engine; but upon payment of all the instalments, and of a further sum of £3, it was to become the property of KING. Under this agreement KING received the engine and placed it upon his land for the purpose of driving a saw-mill. In order to steady it, it was bolted to iron plates which had been set in a bed of concrete laid in the ground. This was in January, 1895. In the following July KING executed a mortgage in fee to the defendant GORRINGE of his land at Worthing, together with the saw-mill and other buildings erected thereon and the fixed machinery and fixtures. In January, 1896, KING was adjudicated a bankrupt, and in March the mortgagee entered into possession. He

found the gas engine fixed to the premises in the manner just described, and he claimed to retain it against the plaintiff, HOBSON.

Having regard to the manner in which the engine was fixed, it appears that it had become, according to the ordinary rule, a part of the land, and that upon a conveyance of the land by way of mortgage it passed to the mortgagee, and further, that, as against the mortgagee, it could not be removed by the mortgagor or any person claiming under him. In *Mather* v. *Fraser* (2 K. & J. 536) the owners in fee of a mill mortgaged it with all fixtures, and the mortgage was held to vest in the mortgagee as against the assignees in bankruptcy of the mortgagor all such of the machinery upon the premises as was fixed to the freehold, whether by screws, solder, or other permanent means. The reasons, said WOOD, V.C., which have induced a relaxation of the law in the case of landlord and tenant do not apply where the parties who affix the machinery are themselves the owners of the soil. In *Walmsley* v. *Milne* (7 C. B. N. S. 115) a steam engine and other articles were fixed by means of bolts and nuts to the floor or walls of a building for the purpose of steadying them, but were all capable of being removed without injury to themselves or to the premises. Previously to their being brought upon the premises, the land had been mortgaged by the owner in fee. Upon his bankruptcy it was held that the mortgagee was entitled to retain them. Here, again, it was pointed out that the cases which had been decided on the relation of landlord and tenant had no application. In *Climie* v. *Wood* (L. R. 3 Ex. 257) an engine was screwed down to some thick planks which were laid upon the ground, and the same result followed. The mortgagee took it as against a purchaser from the trustees of the mortgagor under a deed of inspectorship. "It is a case," said KELLY, C.B., in delivering the judgment of the Court of Exchequer, "between mortgagor and mortgagee, and no authority has been cited to shew that a mortgagor is entitled to remove such trade fixtures." In *Longbottom* v. *Berry* (L. R. 5 Q. B. 123) it was held that as between the mortgagees and the assignee of the mortgagor all machinery annexed to the floor, ceilings, or sides of the mortgaged premises, in a "*quasi*-permanent" manner, passed to the mortgagees; and that it made no difference that the object of the annexation was merely to steady the machines when in use, and that they could be removed without any injury to themselves or to the freehold. The subject was discussed also in *Holland* v. *Hodgson* (L. R. 7 C. P. 328), and the law as laid down in the above cases was affirmed.

Apart, therefore, from any special considerations arising upon the hire and purchase agreement in *Hobson* v. *Gorringe*, it appears that the gas engine in that case had been annexed to the soil, and that it passed to the defendant under his mortgage. The special consideration was that, under the agreement, the plaintiff had the right to remove the engine, and hence he was not claiming under the mortgagor, but by title paramount. In *Cumberland Union Banking Co.* v. *Maryport Hematite Iron and Steel Co.* (40 W. R. 280; 1892, 1 Ch. 415) NORTH, J., seems to have been of opinion that this would oust the title of the mortgagees. The mortgagors, he said, could not be heard to say that the machinery in question was not the property of the person from whom it had been hired, and their mortgagees did not stand in any better position. But the case, so far as it laid down any such general doctrine, must now be taken to be overruled. In *Gough* v. *Wood & Co.* (42 W. R. 469; 1894, 1 Q. B. 713) the decision of NORTH, J., was justified on the ground that the mortgagor had remained in possession, and the fact that the mortgagee allows the mortgagor to remain in possession was held to give the mortgagor an implied authority to hire fixtures necessary for his business and to agree with the owner for their removal. In *Gough* v. *Wood & Co.* the lessee of land entered into an agreement for the hire of a boiler, and then mortgaged the land by sub-demise. Subsequently to the mortgage the boiler was supplied and fixed to the land, and afterwards, upon default in payment of instalments, was removed by the lessors of the boiler. The removal was held to be good against the mortgagee.

The present case of *Hobson* v. *Gorringe* differs from *Gough* v. *Wood* in that the engine was already affixed to the land at the date of the mortgage to GORRINGE, and that it was not removed while the mortgagor was in possession. Probably the former is the more important circumstance for distinguishing the two cases, for if the mortgagee, by leaving the mortgagor in possession, gives him implied authority to enter into a hire and purchase agreement, the effect of the authority cannot be determined by the fact of the mortgagee subsequently going into possession. On the other hand, when, as in *Hobson* v. *Gorringe*, the fixture has already been placed on the land at the time of the mortgage, it does not come within the doctrine of the implied authority. The mortgagee takes it as part of the land, and the owner cannot afterwards remove it save by virtue of some right which binds the land in the hands of assignees. The mortgagee is entitled, in the absence of notice, to treat the fixture as part of his security, and when he claims it he is not claiming some additional benefit, as in the case of a chattel annexed to the freehold after the mortgage. The result seems inevitable, though it leaves the lessor of machinery under an ordinary hire and purchase agreement very much at the mercy of the hirer.

COMPANIES WINDING UP IN THE LEGAL YEAR 1895-6.

IV.

THE decision in favour of the validity of a clause in the articles of association empowering directors to pay out of capital interest on sums paid on shares in advance of calls was received with some surprise, but it has been affirmed in the House of Lords: *Lock* v. *Queensland Investment and Land Mortgage Co.* (44 W. R. 257; 1896, A. C. 461). Such payments out of capital do not, therefore, fall within the class which sometimes gives rise to misfeasance summonses.

For some time past it has been assumed that the fruits of a misfeasance proceeding, even while ungathered, were assets in a winding up, but we believe Mr. Justice VAUGHAN WILLIAMS is the first judge who has gone so far as to put the right to proceed up for sale by tender as a part of the assets: see *Wood* v. *Woodhouse and Rawson (Limited)* (W. N., 1896, p. 4).

Section 51 of the Act of 1862, which defines "special resolution," has more than once come before the courts. Mr. Justice CHITTY, in *Ernest* v. *Loma Gold Mines* (40 SOLICITORS' JOURNAL, 684; 1896, 2 Ch. 572), declined to follow the decision of Mr. Justice VAUGHAN WILLIAMS in *Re Bidwell Brothers* (41 W. R. 363; 1893, 1 Ch. 603), that at a meeting of shareholders convened for passing a special resolution, where the articles permit voting by proxy, the chairman, if no poll is demanded, must count the vote of each person who has appointed a proxy. This decision has been affirmed on appeal (*ante*, p. 47, 45 W. R. 45), and *Re Bidwell Brothers* has been overruled. In *Ernest* v. *Loma Gold Mines* Mr. Justice CHITTY held that the date of the meeting might be inserted by the secretary in a proxy paper when the shareholder giving the proxy had left it blank. The effect of section 51 was further considered in *Young* v. *South African and Australian Exploration and Development Syndicate* (44 W. R. 509; 1886, 2 Ch. 268). The section says that "a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same"; but Mr. Justice KEKEWICH held that, notwithstanding these words, a shareholder is not precluded from disputing the validity of the resolution by legal proceedings on such a ground as that it has not been carried by the statutory majority. The report of the same case contains some valuable observations as regards notices of meetings under the section, and other matters when the company is governed by Table A.

In *Re Hill's Waterfall Estate and Gold Mining Co.* (1896, 1 Ch. 947) there was a voluntary winding up (continued under supervision) and a reconstruction, under which shareholders were entitled to shares in a new company on applying in the manner prescribed. One shareholder applied to certain bankers, as required, but they failed to forward the application to the liquidator, who accordingly allotted all the shares to other persons. Mr. Justice STIRLING decided that he had no jurisdiction in the winding up to award damages against the liquidator.

The case also appears to decide that a voluntary liquidator, even when the winding up is continued under supervision, is not an officer of the court. Some observations at the end of the judgment suggest that, even in a compulsory winding up, a liquidator is not such an officer except when he is performing the duties imposed by section 98 of the Act of 1862. The words of the section are so wide and general that perhaps they include all the duties of a liquidator.

Schemes under the Joint-Stock Companies Arrangement Act, 1870, must now obtain the sanction of Mr. Justice VAUGHAN WILLIAMS, and those who wish them to slide through his court gracefully must conform to the conditions which his lordship's experience in this branch of company law induces him to impose. Some of them have been referred to in former articles, but the following new ones may be mentioned: (*a*) The power to sanction is in the court, and the scheme must not delegate this power to others (see *Re Land Mortgage Bank of Florida*, W. N., 1896, p. 48). (*b*) Any provision in a scheme for payment of costs or remuneration must expressly provide for the taxation or allowance thereof by the court (*Re Mortgage Insurance Corporation*, W. N., 1896, p. 4). (*c*) Proxy papers to be used at meetings under the Act must be in the office form settled by the judge (Practice Direction, 40 SOLICITORS' JOURNAL, 545, W. N., 1896, p. 56). No doubt further conditions will be from time to time imposed, and it behoves the practitioner to keep himself *au courant* with what is from time to time laid down.

When a scheme gave shareholders an option to prepay calls under a discount at four per cent. per annum, Mr. Justice VAUGHAN WILLIAMS adopted the view of the liquidator, a well-known accountant, that true or arithmetical discount was meant. Many lawyers felt sorrowful when they heard of this decision, for some of them had never learnt, and others had forgotten, what "true" discount meant. It means the interest on the present worth, and how to work it out is shewn in Pendlebury's Arithmetic. The learned Lords Justices were, we are sure, among those who had forgotten how to do the sum, and they promptly reversed the decision, holding that discount meant a rebate of so much per cent.—like the threepence in the shilling which they get when they can afford to buy their light literature for cash: *Re Land Securities Co.* (44 W. R. 54; 1896, 2 Ch. 320).

REVIEWS.

CONFEDERATION LAW OF CANADA.

CONFEDERATION LAW OF CANADA; PRIVY COUNCIL CASES ON THE BRITISH NORTH AMERICA ACT, 1867; AND THE PRACTICE ON SPECIAL LEAVE TO APPEAL. By GERALD JOHN WHEELER, M.A., LL.B., Barrister-at-Law. London: Eyre & Spottiswoode.

This ponderous volume contains a magnificent collection of raw material for the constitutional lawyer or the politician whose bent is towards the subject of federation, as well as for the practitioner whose business lies before the Judicial Committee of the Privy Council. But the material is raw. The British North America Act, 1867, is printed in the ordinary manner of a text-book, with notes to each section; but so voluminous are the notes of cases that the Act occupies 553 pages, in which it is often difficult to find the Act at all. The sections are islets of text in an ocean of notes: there are 100 pages of notes to one sub-section (s. 92 (9)). This method of editing amounts almost to a reprint of the *Law Reports* as a setting to a reprint of the statutes.

There follow 500 pages of Imperial statutes which do affect or have affected Canada or other colonies. This enables a comparison to be made between the position of other groups of colonies, who may desire to federate, with the position of Canada at the date of its confederation. Then follow the Acts affecting the Judicial Committee of the Privy Council, with a valuable summary of the conditions of appeal in each colony. To this part should be transferred some eighty-seven pages of notes, on the general subject of special leave to appeal, which have strayed into a note on section 101 of the British North America Act (pp. 395-482). The volume ends with prints of the arguments and judgments in some recent cases of importance before the Privy Council, for which the publication of the book has been delayed.

The book in its present condition will be very useful to the practitioner, especially in the two summaries of notes on practice above referred to. But before it can be offered as food to the politician, it must be passed through the mill of some constitutional lawyer with a faculty of clear and terse exposition. If Professor Dicey or Professor Westlake would take the material of this book and produce four lectures—one on the general effect of the case law on the Canada Act, and the remaining three on the applicability of the Canada Act so expounded to the varying circumstances of the Australasian Colonies, the South African territories, and the West India islands, a practical step forward would be made towards the federation of the Empire. Without such a process, the politician all the world over will be no more affected by the material here collected than if a thunderbolt, equal in weight to this volume, had fallen on the top of Mount Atlas.

We may add that the index is very good, but the table of contents is somewhat bewildering. Of the industry shewn by Mr. Wheeler it is impossible to speak too highly.

INDIAN LAW.

TRIBAL LAW IN THE PUNJAB, SO FAR AS IT RELATES TO RIGHT IN ANCESTRAL LAND. By CHARLES ARTHUR ROE, M.A., Senior Judge of the Chief Court of the Punjab, and H. A. B. RATTIGAN, B.A., Barrister-at-Law, Advocate of the Chief Court of the Punjab. Lahore: The Civil and Military Gazette Press.

The primary object of this work, as Mr. Justice Roe states, is to place before those engaged in the administration of justice in the Punjab a clear explanation and summary of the customary law, but it is likely to have a still wider, if less directly practical, sphere of usefulness by reason of its bearing on the study of customary law in general. The discovery of the native law of the numerous tribes inhabiting the Punjab has been a matter of comparatively recent date. The first impulse of English judges, when regular courts were established, was to apply Hindu law to Hindu tribes and Mohammedan law to Mohammedan tribes, unless some independent custom was expressly proved. But subsequently an important body of evidence as to tribal customs was collected in records prepared under the supervision of the class of administrative officers known as "Settlement officers." Lists of questions on various heads of law were drafted, and the answers to these were entered by the officers in records known as *Riwaj-i-ám* after consultation with the headmen of each village and other leading men of the chief tribes. The results of these records are carefully analyzed by Mr. Justice Roe in Chapter II. of the present work. This process began in 1895, soon after it had been realized that, instead of the general Hindu and Mohammedan law prevailing, subject only to local exceptions, the native law really consisted of customs common to whole tribes. Mr. Justice Roe illustrates the mistake by saying that it was equivalent to assuming that all Protestants are governed by Biblical law and all Roman Catholics by Canon law. As the work of preparing the tribal records approached completion, it became, we are told, more and more evident that the tribal law of the Punjab had little or no connection with either Hindu or Mohammedan law, but had an independent origin and general principles of its own. The basis, therefore, of the decisions of the chief court was altered, and of late years the court has looked to the newly-discovered principles of the tribal law for guidance. These decisions are collected by Mr. Rattigan in Chapter III. In the first chapter Mr. Justice Roe has given an account of the various tribes, and has stated the general principles of the tribal law. At the same time he has made some suggestions as to the origin of customary law which are worthy of careful attention. For its primary purpose we should imagine the book will be very valuable. To readers at home it presents an interesting picture of the ascertainment and treatment of native law under English rule.

MAGISTERIAL LAW.

AN ELEMENTARY TREATISE ON MAGISTERIAL LAW AND ON THE PRACTICE OF MAGISTRATES' COURTS. By W. SHIRLEY SHIRLEY, M.A., Barrister-at-Law. SECOND EDITION. By LEONARD H. WEST, LL.D., Solicitor, Law Tutor to the Incorporated Law Society (U.K.) Stevens & Sons (Lim.)

Of late years magisterial law (important subject though it be) seems to have taken an almost too prominent place in the final examinations of the Incorporated Law Society, and as a consequence far too few questions have been set on the general principles of the criminal law. It has therefore become a very important branch of the law for students, and this book may be safely recommended to them for the purpose of acquiring the necessary knowledge. It is written clearly and concisely, is well arranged, and admirably adapted to its object—namely, to give the student and also the young practitioner such a general view of the subject as will fit the one for his examination, the other to appreciate the standard books of reference on magisterial law.

TABULAR VIEW OF THE SUMMARY JURISDICTION OF JUSTICES AS TO INDICTABLE OFFENCES UNDER THE SUMMARY JURISDICTION ACT,

1879, WITH THE EFFECT OF THE FIRST OFFENDERS ACT, 1887, AND REFORMATORY SCHOOLS ACT, 1893. By EDWARD T. AYRES, Solicitor. SECOND EDITION. Waterlow & Sons (Lim.)

This is a large sheet, intended apparently to be affixed to the wall in a police court or in the office of a clerk to justices. It is divided into five columns, which shew at a glance (1) the persons liable to be dealt summarily for indictable offences; (2) the offences for which such persons may be so dealt with; (3) matters which are necessary to give justices jurisdiction; (4) the amount of punishment which can be awarded in each case; and (5) the powers the justices possess of discharging an accused without punishment, or of otherwise mitigating the rigours of the law. The fact that this is the second edition of this table shows that it satisfies a demand. It seems to be accurate and up-to-date, and no doubt may prove a saving of time to many a busy magistrate's clerk.

CRIMINAL LAW.

A GUIDE TO CRIMINAL LAW, INTENDED FOR THE USE OF STUDENTS FOR THE BAR FINAL AND FOR THE SOLICITORS' FINAL EXAMINATIONS. By CHARLES THWAITES, Solicitor. London: Geo. Barber, "Law Students' Journal" Office.

This little book is one of a class of works which no doubt have a ligitimate sphere of usefulness, but which are sometimes used in a mischievous manner. The author says it has been found useful by students "as a means of acquiring and testing their knowledge of criminal law." We do not think that the student should trust to *acquiring* his knowledge from this book, but if it is used merely as a test of knowledge previously acquired by the careful study of books which deal with the principles of the criminal law in greater detail, then it may undoubtedly be useful. Regarded from this latter point of view the book is decidedly well put together, is accurate, and contains as much matter as anyone could expect to find within such narrow limits.

BOOKS RECEIVED.

Key and Elphinstone's Compendium of Precedents in Conveyancing. Fifth Edition. By Sir HOWARD WARBURTON ELPHINSTONE, Barrister-at-Law, one of the Conveyancing Counsel of the Court. Assisted by WILLIAM HEW COLTMAN, Barrister-at-Law. In two volumes. Sweet & Maxwell (Limited).

CORRESPONDENCE.

COURT FEES.

[*To the Editor of the Solicitors' Journal.*]

Sir,—Seeking to sign judgment on a divisional court order, made on a motion to affirm a special referee's award, a fee of £1 was demanded by the Judgment Department on entering judgment. We demurred, having paid £1 on the court order, arguing that there was no authority for such demand, and that No. 57 in the schedule to order as to court fees 1884 could not apply to this case.

The answer was, that the department had always taken £1 on entering such judgments.

We then went before two of the practice masters, and in the result the conclusion come to, not without considerable discussion, was that the proper fee was 10s.

We write this in order that the profession may know that the £1 fee hitherto demanded and paid upon entering such a judgment as ours will no longer have to be borne.

For ourselves we have considerable doubt if there is any authority at all for the fee of £1 charged on signing a judgment when a fee of £1 has been paid either on a certificate or order following a hearing.

These court fees are so high that it behoves the profession to look carefully into them, and see that they are not paying more than can properly be extracted out of their clients' pockets.

SCHULTZ & SON.

12, South-square, Gray's-inn, London, Dec. 24.

FACTORY AND WORKSHOP ACTS.

[*To the Editor of the Solicitors' Journal.*]

Sir,—You recently noticed in your columns Abraham and Davies' "Law relating to Factories and Workshops." May I point out that these authors have apparently overlooked the "Prevention of Cruelty to Children Act, 1894" (58 & 59 Vict. c. 41), which I think ought to have been substituted for the "Prevention of Cruelty to, and Protection of, Children Act, 1889" (52 & 53 Vict. c. 44), erroneously given on p. 239. If this statute was put right in the next edition, the work would be as useful as its competitors.

T. F. UTTLEY.

17, Brazennose-street, Manchester, Dec. 30.

CASES OF LAST SITTINGS.

Court of Appeal.

HOBSON *v.* GORRINGE. No. 2. 11th and 19th Dec.

MORTGAGOR AND MORTGAGEE—FIXTURES—GAS ENGINE FIXED TO THE SOIL—RIGHT OF OWNER OF ENGINE, BY CONTRACT WITH MORTGAGOR, TO REMOVE ENGINE—MORTGAGEE TAKING POSSESSION—ABSENCE OF NOTICE OF CONTRACT.

Appeal from a decision of Kekewich, J. The learned judge had given judgment for the defendant in an action to recover the value of a gas engine, the property of the plaintiff, which had been affixed to premises afterwards mortgaged to the defendant, and of which the defendant as mortgagee had taken possession along with the mortgaged premises.

THE COURT (Lord RUSSELL OF KILLOWEN, C.J., and LINDLEY and A. L. SMITH, L.JJ.) dismissed the appeal.

A. L. SMITH, L.J., read the judgment of the court as follows: This case, though small as to amount, raises a considerable question; which is, whether a mortgagee of land in fee, when he enters upon the mortgaged premises, can take possession of an engine which is attached to the soil thereof by means of bolts and screws, although the engine did not and never had belonged to the mortgagor, but to a third party. Upon the 7th of January, 1895, the plaintiff Hobson by a contract in writing not under seal let to a builder named King a gas engine, upon what is known as the hire and purchase system, for the purpose of being fixed on King's land at Worthing, of which King was owner in fee. By the contract it was agreed that King was to pay Hobson for the engine £18 in cash before delivery, and the sum of £3 10s. per month after delivery for the period of ten months, at the expiration of which time the gas engine was to become the absolute property of King upon the further payment of £3. It was also agreed that if during the continuance of the hiring King should fail to pay the hire or any part thereof Hobson should be at liberty to repossess himself of and to remove the gas engine, and that King should have no claim whatever against Hobson, either for money he had paid for the gas engine or for any damage sustained by reason of the retaking thereof. It was further agreed that the contract should not be construed to operate in any way as a contract for the sale of the gas engine, but only as an arrangement for the hire thereof, unless and until King should have paid the instalments before mentioned. It was known to Hobson that this gas engine was required by King in order to drive a saw-mill which he had upon his land at Worthing, and that the way it was to be erected (and in fact was erected) for this purpose was as follows: In the first place a bed of concrete was prepared, in which were embedded two iron plates, out of each of the four outside corners of which an iron bolt projected upwards in a vertical position, having a screw at its uppermost end. The base plate of the gas engine was fitted with four holes, one at each outside corner, so that when the engine was placed in position upon the concrete bed the four bolts projected through the four holes in the base of the engine, and nuts were then screwed down tightly upon the tops of the bolts, and thus the engine was kept in position and prevented from rocking or shifting, as it would have done if merely placed upon the concrete foundation, without the aid of the projecting bolts. An exhaust pipe and exhaust boxes and a pulsometer were also let on hire and purchase to King by the plaintiff, together with the gas engine, which were more or less affixed to the building in which the engine stood, but we do not consider that these have any material bearing upon the case, for if the affixing of the gas engine in the manner above described did not convert it into a fixture, and thus part of the freehold, we do not think that the other attachments, upon the conflicting evidence relating thereto, should be held to do so. The above statement of fact shews what was the ostensible annexation of the gas engine to the soil of King's land, as also the object for which it was so annexed. King made some of the monthly payments of £3 10s. per month to Hobson, and then fell into arrear, and he has never made the contracted payments so as to become the owner of the gas engine as a chattel. Upon the 24th of July, 1895 (we omit a former mortgage of the 26th of March, 1894, for it is not relevant to the point under consideration), King, for valuable consideration, conveyed by way of mortgage to the Rev. Mr. Gorringe his land at Worthing (together with the saw-mill, engine-house, warehouses, and other buildings erected thereon, and the fixed machinery and fixtures) in fee simple, subject to the usual proviso for redemption. On the 17th of January, 1896, King was adjudicated a bankrupt, and in March of that year the mortgagee, Mr. Gorringe, lawfully entered and took possession of the mortgaged premises, together with the gas engine, which he found in its place as before mentioned. The question is whether Mr. Gorringe is entitled, under the above circumstances, to the gas engine. It is not disputed that he is entitled to the land; but the plaintiff, Mr. Hobson, denies that he is entitled to the gas engine, upon the ground that it had never become King's property, and had always remained a chattel belonging to him, Hobson. There can be no doubt, on a mortgage in fee of land, that as between the mortgagor and mortgagee the mortgagee is entitled to all fixtures which may be upon the land, whether placed there before or after the mortgage. If North, J., in the passage in his judgment which has been referred to, in *Cumberland Union Banking Co.* v. *Maryport Hematite Iron Co.* (40 W. R. 280; 1892, 1 Ch. 415, at p. 425), meant to hold otherwise, in our opinion he was in error, but we doubt if he intended so to hold. The case of *Gough* v. *Wood* (42 W. R. 469; 1894, 1 Q. B. 713), decided in this court, in no way assists the plaintiff in this case, and has no application to the present case. That case was decided solely upon the ground that the mortgagee had acquiesced in the removal by the mortgagor during his tenancy of trade fixtures. For additional confirma-

tion of the *ratio decidendi* of this case, what was said by Lindley, L.J., at p. 282, and by Kay, L.J., at p. 286, in the case of *The Huddersfield Banking Co.* v. *Lister* (43 W. R. 567; 1895, 2 Ch. 273), may be referred to. Even if in the present case a licence had been granted by Gorringe to King to remove the gas engine during the continuance of a term (neither of which in fact existed), Gorringe by entering and taking possession of the land and engine would have determined such licence. We now come to the real point made on behalf of the plaintiff Hobson. It is this. It is said that this gas engine never was a fixture, but always remained a chattel, and consequently never passed to Gorringe as mortgagee of the land. It obviously did not pass to him as a chattel under the mortgage of "fixed machinery," for, if a chattel, it ever remained Hobson's, and never was the property of King, and unless Mr. Gorringe takes the engine as being part of the land mortgaged to him, he does not take it at all. Now, leaving out of consideration for the present the hire and purchase agreement of the 7th of January, 1895, there is a sequence of authorities which establish that the gas engine, affixed as it was, and for the purpose for which it was, to King's freehold, ceased to be a chattel and became part of the freehold. Take, first of all, the case, in 1853, of *Wiltshear* v. *Cottrell* (1 El. & Bl. 674, 688). There the Court of Queen's Bench held that a threshing machine fixed by bolts and screws to posts which were let into the ground, and which machine could not be got out without disturbing some of the soil, would clearly pass under a conveyance of land and all fixtures. In the case, three years afterwards (in 1856), of *Mather* v. *Fraser* (4 W. R. 387, 2 K. & J. 536), which was a case between the assignees of a mortgagor and mortgagees, Page Wood, V.C., held that machinery fixed to the land, whether by screws, solder, or other permanent means passed to the mortgagees. Again, in *Walmsley* v. *Milne* (1859, 7 C. B. N. S. 115), which was a case between a mortgagor and mortgagee in fee, the Court of Common Pleas held that a steam engine and boiler and other implements secured by bolts and nuts to the walls, though they were all capable of being removed without injury either to the machinery or to the premises, were fixtures, and passed to the mortgagee as part of the freehold. In *Climie* v. *Wood* (1868, L. R. 3 Ex. 257), which was a case between mortgagor and mortgagee in fee, the jury found that an engine and boiler which were used for sawing purposes (the engine being screwed down to planks upon the ground, and the boiler being fixed in the brickwork) were trade fixtures, and had been so fixed for their better use and not to improve the inheritance, and that they were removable without any appreciable damage to the freehold. The Court of Exchequer nevertheless held that the engine and boiler passed to the mortgagee, and this judgment was affirmed by the Court of Exchequer Chamber (reported L. R. 4 Ex. 328). Willes, J., who delivered the judgment of the court, stating that the reasons for a tenant with a limited interest being allowed to remove trade fixtures were not applicable to the owner of the fee. In *Longbottom* v. *Berry* (L. R. 5 Q. B. 123), which was a case between assignees of a mortgagor and mortgagees, it was also held that machinery annexed to the floor of a building in a "*quasi* permanent manner" by means of bolts and screws passed to the mortgagees, and in 1872 the Exchequer Chamber in *Holland* v. *Hodgson* (20 W. R. 990, L. R. 7 C. P. 328) affirmed *Mather* v. *Fraser* (*ubi supra*) and *Longbottom* v. *Berry* (*ubi supra*), and held that looms attached by means of nails driven through holes in the feet of the looms into the floors, which attachment was necessary to keep the looms steady when at work, and which nails could be drawn easily and without any serious damage to the flooring, formed part of the realty, and passed to the mortgagee in fee. If there had been in this case nothing but the existing visible degree of annexation of the gas engine to King's freehold and the known object for which such annexation had taken place, the authorities conclusively establish that the gas engine had ceased to be a chattel, and had become part of the freehold. But it was agreed that the terms of the hiring and purchase agreement caused this engine to remain a chattel, notwithstanding its annexation to the soil, for it was said that the intention of the parties who placed it where it was must be considered, and, if this consideration showed that the intention was that the chattel was not to be a fixture, though actually fixed to the freehold, it still remained a chattel. In support of this argument a passage in the judgment of Lord Blackburn (then Blackburn, J.) when delivering the judgment of the Exchequer Chamber in *Holland* v. *Hodgson* (*ubi supra*) was vouched. That learned judge, when dealing with what were or were not fixtures, says: "Perhaps the true rule is that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying upon those who assert that they have ceased to be chattels, and that on the contrary an article which is affixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel. The question in each case is whether the circumstances are sufficient to satisfy the onus." It is said on behalf of the plaintiff that the hire and purchase agreement shews an intention on Hobson's part, as also on King's part, that the gas engine should remain a chattel until King had paid the contracted instalments, which he never did. Now, if the engine had been a trade fixture erected by King, as tenant with a limited interest, we apprehend that when affixed to the soil as it was it would have become a fixture—*i.e.*, part of the soil, and would immediately have vested in the owner of the soil, subject to the right of King to remove it during his term. "Such," says Lord Chelmsford in *Bain* v. *Brand* (1 App. Cas. 762, 772), "is the general law. But an exception has been long established in favour of a tenant erecting fixtures for the purposes of trade, allowing him the privilege of removing them during the continuance of the term. When he brings any chattel to be used in his trade and annexes it to the ground it becomes a part of the freehold, but with a power as between himself and his landlord of bringing it back to the state of a chattel again by severing it from the soil. As the personal character of the chattel ceases when it is fixed to the freehold, it can never be revived as long as it continues so annexed." It seems to us that the true view of the hiring and purchase agreement, coupled with the annexation of the engine to the soil, which took place in this case, is that the engine became a fixture—*i.e.*, part of the soil, when it was annexed to the soil by screws and bolts, subject as between Hobson and King to this, that Hobson had the right by contract to unfix it and take possession of it if King failed to pay him the contracted monthly instalments. In our opinion the engine became a fixture—*i.e.*, part of the soil—subject to this right of Hobson which was given him by contract. But the right was not an easement created by deed, nor was it conferred by a covenant running with the land. The right, therefore, to remove the fixture imposed no legal obligation on any grantee from King of the land. Neither could the right be enforced in equity against any purchaser of the land without notice of the right; and the defendant Gorringe is such a purchaser. The plaintiff's right to remove the chattel if not paid for cannot be enforced against the defendant, who is not bound, either at law or in equity, by King's contract. The plaintiff's remedy for the price, or for damages for the loss of the chattel, is by action against King, or, he being bankrupt, by proof against his estate. This, in our judgment, is sufficient to determine this case in favour of the defendant. But as another point has been stoutly argued on behalf of the plaintiff we will deal with it. It is said that the intention that the gas engine was not to become a fixture might be got out of the hire and purchase agreement, and that if so it never became a fixture and part of the soil; and it was said that the case of *Holland* v. *Hodgson* (*ubi supra*) had so decided. For this point it must be assumed that such intention is manifested by the hiring and purchase agreement, though, as before stated, we think it is not. Now, in *Holland* v. *Hodgson* (*ubi supra*) Lord Blackburn, when dealing with the "circumstances to shew intention," was contemplating and referring to circumstances which shewed the degree of annexation and the object of such annexation, which were patent for all to see, and not to the circumstance of a chance agreement, which might or might not exist, between the owner of a chattel and a hirer thereof. This is made clear by the examples which Lord Blackburn alludes to to shew his meaning. He takes as instances (*a*) blocks of stone placed in position as a dry stone wall or stacked in a builder's yard; (*b*) a ship anchor affixed to the soil, whether to hold a ship riding thereto or to hold a suspension bridge. In each of these instances it will be seen that the circumstance to shew intention is the degree and object of the annexation, which is in itself apparent, and thus manifests the intention Lord Blackburn in his proposed rule was not contemplating, a hire and purchase agreement between the owner of a chattel and a hirer, or any other agreement unknown to either a vendor or mortgagee in fee of land, and the argument that such a consideration is to be entertained, in our judgment, is not well founded. It was further argued on behalf of the plaintiff that the cases of *Wood* v. *Hewett* (1846, 8 Q. B. 913) and *Lancaster* v. *Eve* (1859, 7 W. R. 260, 5 C. B. N. S. 717) shewed that the intention of the parties affixing a chattel to the soil must be ascertained when considering whether a chattel is or is not a fixture and part of the soil. In our opinion these cases do not shew this; and indeed, if they did, as before stated, if the hire and purchase agreement is considered, it does not shew what the plaintiff says it does. In the first case, *Wood* v. *Hewett* (*ubi supra*), the plaintiff, a miller, had put up a movable hatch which worked up and down a groove in some immovable masonry and brickwork upon the defendant's land, and had so used it for years, the complaint against the defendant being that he had pulled up and taken away the hatch. The question was whether this movable hatch remained the plaintiff's or had become the property of the defendants. The jury found that the property remained the property of the plaintiff, and the court in banco held, as we read the case, that the jury were well warranted in finding that, as between the plaintiff and the defendant, the former had become entitled to have the hatch, which was his own property, standing in the soil of the defendant; in other words, that it might be inferred that the plaintiff had acquired an easement of having his hatch on the defendant's land, and could therefore sue for interference therewith. There was no question in this case between a mortgagee and a third party. In the second case, *Lancaster* v. *Eve* (*ubi supra*), the plaintiff, who was a wharfinger, many years before action brought had driven a pile into the bed of the Thames, which was the property of the Crown, for the purpose of carrying on the necessary business of his wharf, and for years and years had used this pile without interruption by anyone, until the defendant's barge, by reason of the negligence of the defendant's servant, ran against it and carried it away. The point taken by the defendant was that the pile had been affixed to and formed part of the bed of the river, which was not the property of the plaintiff, and that, therefore, he could maintain no action for injury thereto; but the court held that as between the plaintiff and the Crown it ought to be inferred that although the pile had been affixed in the soil of the river yet it was so affixed by agreement between the plaintiff and the Crown that the former should have an easement over the Crown's property so as to be able to use the pile necessary for carrying on the business of the plaintiff's wharf. This is the point decided, though there are, as has been pointed out, some isolated passages as to the intention of persons when affixing a chattel to the soil. That the plaintiff had a cause of action in some form or other against the defendant cannot be denied, but if the case decided, as it is argued it did, that the pile remained a chattel, we do not agree with it. That a person can agree to affix a chattel to the soil of another, so that it becomes part of that other's freehold, upon the terms that the one shall be at liberty in certain events to

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retake possession, we do not doubt. But how a *de facto* fixture becomes not a fixture, or is not a fixture as regards a purchaser of land for value without notice, by reason of some bargain between the affixers, we do not understand; nor has any authority to support this contention been adduced. For the reasons above, in our judgment, the gas engine became affixed to and was part of King's freehold, and thus passed to Mr. Gorringe as mortgagee in fee of King's land. The point made upon the plate on the gas engine when delivered comes to nothing, for it is no more than an indication of what the agreement was as between Hobson and King, and, as there is no evidence whatever that Mr. Gorringe was ever made aware of it, it cannot affect his right as mortgagee in fee of King's land. In our judgment Kekewich, J., was right when he gave judgment, as he did, for the defendant, and we think that this appeal must be dismissed with costs.—Counsel, *Joseph Walton*, Q.C., and *Curtis Price; Warrington*, Q.C., and *Willoughby Williams*. Solicitors, *C. W. & H. B. Taylor; E. H. Quicke*, for *H. M. Williams*, Brighton.

[Reported by R. C. Mackenzie, Barrister-at-Law.]

DE LA ROCHEFOUCAULD *v.* **BOUSTEAD.** No. 2. 2nd Nov. and 12th Dec.

Trust—Proof of—Absolute Conveyance—Statute of Frauds (29 Car. 2), s. 7.

This appeal raised several important questions, the main question being as to the proof of a trust which was denied by the defendant, who relied on section 7 of the Statute of Frauds. The plaintiffs in the action were the Comtesse de la Rochefoucauld and her daughter, and they claimed a declaration that the defendant Mr. Boustead, who in 1873 purchased certain estates in Ceylon formerly belonging to the plaintiff, the Comtesse de la Rochefoucauld, at a sale of them by the mortgagees, had purchased them as a trustee for the plaintiffs. And they also claimed an account and payment by the defendant of the balance which might be found due from him. The action was tried before Kekewich, J., who held that the plaintiffs had failed to prove the alleged trusteeship, and that there was no trace of a confidential relation between the defendant and the Comtesse; and his lordship accordingly gave judgment for the defendant with costs. The plaintiffs appealed.

The judgment of the Court of Appeal (Lord Halsbury, C., and Lindley and A. L. Smith, L.JJ.) was delivered by

Lindley, L.J.—He said the question raised by this appeal is whether the plaintiff is entitled to an account from the defendant of the proceeds of sale of certain coffee estates in Ceylon. The estates in question are known as the Delmar estates. They formerly belonged to the plaintiff; they were mortgaged first to Barings and then to a Dutch company, and on the 27th of May, 1873, they were sold and conveyed to the defendant. In form the conveyance was to him absolutely, but the plaintiff insists that the estates were conveyed to the defendant as a trustee for the plaintiff, subject, however, to the repayment to the defendant of the amount which he paid for them and of the expenses which he has incurred in managing the estates. The estates were sold by the defendant or his mortgagees many years ago without the knowledge of the plaintiff, and she says that the proceeds of sale were more than sufficient to repay to the defendant all his advances and that a considerable surplus remained which the defendant ought to have paid over to her. The defendant, in answer to this claim, says (1) the estates were conveyed to him, not as a trustee for the plaintiff, but as beneficial owner; (2) the trusts alleged by the plaintiff cannot be proved by any writing signed by the defendant, and the Statute of Frauds affords a defence to the action; (3) the plaintiff's claim, even if proved, is barred (*a*) by the defendant's bankruptcy, (*b*) by the Statute of Limitations, (*c*) by the plaintiff's laches and the equitable doctrines applicable to delay independently of the statute. Kekewich, J., decided against the plaintiff on the first ground—viz., that there was no trust in favour of the plaintiff. This view of the case rendered it unnecessary for him to consider the other defences. The plaintiff has appealed from this decision, and as we have been unable to take the same view as the learned judge of the effect of the evidence, it will be necessary for us to deal with all the other defences relied upon by the defendant. The circumstances under which the Delmar estates were conveyed to the defendant are to be gathered from the verbal testimony of the plaintiff, the defendant, a Mr. Duff, and a mass of correspondence, both before and after the conveyance. The correspondence after the conveyance is relied upon by the plaintiff as being inconsistent with the defendant's contention that he acquired the estates for himself beneficially free from any trust in favour of the plaintiff. In order to appreciate the above evidence it is necessary to state that, in 1868, the plaintiff, who was then the wife of a Mr. Cavendish, was divorced from him, and that, under the decree of the Divorce Court, that gentleman acquired an interest in these Delmar estates, and that his claims on these estates under that decree was not released until a compromise with him was effected in 1874. In the meantime it was a great object of the plaintiff and her friends to prevent Mr. Cavendish from deriving any benefit from these estates. The plaintiff and her friends were afraid that he might, under the decree of the Divorce Court, get himself registered in Ceylon as entitled to a charge on those estates, and perhaps even acquire them by paying off the mortgagees and foreclosing the plaintiff. In 1868 the estates were mortgaged to a Dutch company which was in liquidation, and the liquidator desired to get in the amount due on the mortgage. The plaintiff was extremely anxious that her late husband should not get this mortgage transferred to himself or any friend of his. At the period to which we are now referring the disease which afterwards destroyed the coffee plantations in Ceylon had not broken out, and the Delmar estates were worth far more than the amount due to the Dutch company upon their mortgage. The colonial rate of interest was 6 per cent. A transferree of the Dutch mortgage would therefore acquire a good investment for his money. Moreover, it would be an object to any one acquainted with the working of Ceylon coffee estates to have the management of them and to be the agent for the sale of their produce. These considerations of friendship for the plaintiff induced a gentlemen of the name of Duff to assist the plaintiff; and after some negotiations it was agreed that the Dutch mortgage should be transferred to Duff and to the defendant who was brought into the matter by Duff or by Mr. Sabonadiere, the plaintiff's agent in Ceylon. The defendant has had experience in the management of coffee estates and in receiving and disposing of consignments of coffee from them, and had business transactions with Mr. Sabonadiere. The above arrangement was not, however, carried out, owing to some objection taken by Mr. Duff to the form of the draft transfer which had been prepared. It was then proposed that the Dutch mortgagees should sell the estates to Duff and Boustead for the amount due on their security, and on the 1st of July, 1871, an agreement to this effect was signed. Before the sale was completed Mr. Duff refused to carry it out. The defendant, however, hoped to become the plaintiff's representative in England and the consignee of the produce of her estates, and he did not wish to break faith with the Dutch company. The defendant was willing to carry out the above arrangements himself. Accordingly, after some further negotiation, the estates were sold and conveyed to him in May, 1873, by the Dutch company for the amount due to them on their security as had been agreed in July, 1871. The sum paid by the defendant to the Dutch company was £57,942. But he immediately remortgaged the estates to the Dutch company for £53,000, so that his actual payment out of pocket was under £5,000. Pausing here it is, in our opinion, clear beyond all doubt that the proposed sale to Duff and Boustead was not intended to be a sale to them for their own benefit. It was intended to be a sale to them for the benefit of the plaintiff, but subject, of course, to the repayment of Duff's advances. This is quite plain from Duff's evidence and from the correspondence. It is also clear that the plaintiff's name was kept off all formal documents in order to prevent her first husband from discovering that she had any interest in the estates, and to lead him to suppose that they had passed into the hands of strangers. It is, further, quite clear that the conveyance to the defendant grew out of the arrangement which he and Duff were to have carried out, and was made for precisely the same purpose. There is not in the whole correspondence a line to show that the price which the defendant paid had any reference to the value of the estates, nor to show or suggest that the conveyance to the defendant was intended to be to him for his own benefit. The history of the transaction is wholly inconsistent with any such intention. [His lordship then referred to the correspondence, and came to the conclusion that the plaintiff had proved that the estates in question were conveyed to the defendant on the 27th of May, 1873, upon trust for her, but subject to a charge in his favour in respect of all sums advanced by him in order to obtain these estates from the Dutch company in the first instance, and of all sums advanced by him in order to work them as coffee plantations after he had acquired them.] This conclusion renders it necessary to consider whether the Statute of Frauds affords a defence to the plaintiff's claim. The section relied upon is section 7, which has been judiciously interpreted in *Forster* v. *Hale* (3 Ves. 695) and *Smith* v. *Matthews* (3 De G. & J. 139). According to these authorities it is necessary to prove by some writing or writings signed by the defendant, not only that the conveyance to him was subject to some trust, but also what that trust was. But it is not necessary that the trust should have been declared by such a writing in the first instance; it is sufficient if the trust can be proved by some writing signed by the defendant, and the date of the writing is immaterial. It is further established by a series of cases, the authority of which cannot now be questioned, that the Statute of Frauds does not prevent the proof of a fraud; and that it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself. Consequently, notwithstanding the statute, it is competent for a person claiming land conveyed to another to prove by parol evidence that it was so conveyed upon trust for the claimant, and that the grantee, knowing the facts, is denying the trust and relying upon the form of conveyance and the statute in order to keep the land himself. The defence, based on the Statute of Frauds, is met by the plaintiff in two ways. First, she says that the documents signed by the defendant prove the existence of the trust alleged; secondly, she says that if those documents do not prove what the trust is with sufficient fulness and precision, the case is one of fraud, which lets in other evidence, and that, with the aid of other evidence, the plaintiff's case is established. In our opinion the plaintiff is correct in this contention. [His lordship then referred to certain letters signed by the defendant, and continued:] We are by no means satisfied that they do not contain enough to satisfy the Statute of Frauds. Whether this is so or not, the other evidence is admissible in order to prevent the statute from being used in order to commit a fraud, and such other evidence proves the plaintiff's case completely. Counsel for the plaintiff contended that the Statute of Frauds had no application to lands in Ceylon; but, having regard to *Leroux* v. *Brown* (11 C. B. 801), and to the language of section 7 of the Statute of Frauds, we are unable to see why the defendant should not be able to rely on that statute as a defence to any proceedings in this country having for their object the proof and enforcing of a trust, even of lands abroad. The statute relates to the kind of proof required in this country to enable a plaintiff suing here to establish his case here. It does not relate to lands abroad in any other place than this; it regulates procedure here, not titles to land in other countries. If, therefore, the statute afforded the defendant a defence, he would be entitled to the benefit of it. But for the reasons above given, the statute affords him no protection. Having come

to the conclusion that the plaintiff has proved her case by evidence admissible by our law, it is necessary to consider the other defences raised. [His lordship then dealt with the other defences raised by the defendant, holding that none of them ought to prevail, and proceeded as follows:] The appeal must be allowed and the judgment be reversed. It must be declared that the defendant purchased the Delmar Estates as a trustee for the plaintiff, but subject to a charge for the amount paid to the Dutch company. An account must then be directed of the defendant's dealings and transactions with the Delmar Estates. The account will be an account as between a trustee and his *cestui que trust*, not an account as between mortgagor and mortgagee, and there must be no account on the footing of wilful default. The defendant must be allowed all his advances and outlays, with Colonial interest; but he ought only to be charged simple interest at 4 per cent. on balances in his hands, unless it appears that he has made more. Minutes had better be prepared and signed, and, if necessary, they can be mentioned to the court. The defendant must pay the costs of the action up to the hearing and the costs of the appeal.—Counsel, *Haldane*, Q.C., and *Gilmour; Renshaw*, Q.C., and *G. Lawrence*. Solicitors, *G. H. Lea; Hollams, Son, Coward, & Hawksley*.

[Reported by W. Scott Thompson, Barrister-at-Law.]

High Court—Chancery Division.

MURRAY *v.* EPSOM LOCAL BOARD. Stirling, J. 24th Nov., 10th Dec.

Local Government—Local Authority—Removal of Obstruction to Highways—Interest of Member in Subject-Matter of Proceedings—Public Health Act, 1875 (38 & 39 Vict. c. 55), Schedule 2, r. 64—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46.

This case raised incidentally the question of a public body having its proceedings vitiated by reason of one of its members having an interest in the subject-matter of its proceedings. The plaintiffs were owners of property adjoining a footpath known as Madan's-walk, on the opposite side of which was land belonging to a Mr. Langlands, a member of the board. Mr. Langlands cut a road through his property into Madan's-walk, the result of which was that the public were enabled to use Madan's-walk for vehicular traffic. To stop this the plaintiffs erected posts on their half of the walk, and sought to induce the board to exercise their powers to protect Madan's-walk as a public footpath. The board declining to interfere, the plaintiffs erected further posts which were removed by the board. The plaintiffs then brought an action for a declaration that they were entitled to erect the posts in question, and for an injunction to restrain the board from interfering with them. In their statement of claim the plaintiffs made several allegations which in effect amounted to a charge that the board had been improperly influenced by Mr. Langlands. The defendants now applied to the court to strike out the paragraphs in the statement of claim containing these allegations.

Stirling, J.—It is contended that the acts of the board were vitiated by reason of Mr. Langlands being present at the meetings when the plaintiff's applications were discussed, and being allowed to influence the board in favour of his views. It is admitted that no direct authority in support of this contention can be found either in the statutes or the general law. Schedule II., rule 64, of the Public Heath Act, 1875, and the similar provision found in section 46 of the Local Government Act, 1894, do not extend to the case of a member having a personal interest in a matter which comes before the board, and if they did the effect would be not to vitiate the acts of the board but to deprive the member of his seat. It was argued, however, that in the case provided for by these rules and enactment the validity of the contract would be affected, and the case of *Aberdeen Railway Co.* v. *Blaikie* (1 Macq. 461) was cited in support of this view. That case, however, is not an authority for the proposition that the existence of an interest disclosed or undisclosed on the part of one of the members vitiates the resolution of the board. It is true that there is a large class of cases, of which *Reg.* v. *London County Council* (40 W. R. 285; 1892, 1 Q. B. 190) is a recent example, in which it has been held that the presence of a person having a pecuniary interest at a meeting of a public body vitiates its proceedings—viz., where that body is acting judicially. In the present case the defendants are acting as surveyors of highways and performing the duties cast on them by section 144 of the Public Health Act, 1875, and the Local Government Act, 1894, s. 26 (1). The position of local authorities in reference to the removal of obstructions to highways was considered in the case of *Reynolds* v. *The Urban District Council of Presteign* (44 W. R. 479; 1896, 1 Q. B. 609), and there is no authority for saying that the acts of the board in this capacity are in any way judicial. The real issue in this case is whether the posts erected by the plaintiffs constitute an obstruction to the public right of way. To this issue the allegations complained of are irrelevant, and I think the paragraphs containing them ought to be struck out of the pleadings.—Counsel, *Graham Hastings*, Q.C., and *S. Dickinson; Buckley*, Q.C., and *W. C. Dare*. Solicitors, *Murray, Hutchins, & Stirling; Letts Brothers* for *George White*.

[Reported by J. I. Stirling, Barrister-at-Law.]

WOOD *v.* MIDDLETON. Stirling, J. 24th Nov., 16th Dec.

Practice—County Court—Service out of the Jurisdiction—Transfer to High Court—County Courts Act, 1888, ss. 67, 68, 164—County Court Rules, 1889, ord. 51, r. 23—Judicature Act, 1875, s. 17—Ord. 11, rr. 1 (d) and 2.

This case raised two questions—first, whether service out of the jurisdiction under order 51, rule 23, of the County Court Rules of 1889, which is wider than the corresponding High Court rule, was effective; and, secondly, what was the result, as regards such service, of the transfer of the action to the High Court. The action in question was commenced in the County Court of Cumberland and an order was made in that court giving leave to the plaintiff to administer interrogatories to the defendant, who was resident in Scotland. The defendant answered the interrogatories, but raised two objections—first, that the action was beyond the county court limits; secondly, that the processes were served in Scotland, out of the jurisdiction. The county court judge sustained the first objection, and made an order transferring the action to the High Court. Nothing was decided as to the second objection. A summons was then taken out in the High Court asking for a further and better answer to the interrogatories, and the defendant then raised the objection of want of jurisdiction.

Stirling, J.—The jurisdiction of the county court depends on sections 67 & 68 of the County Courts Act, 1888; and section 164 of that Act confers on the authorities who frame rules for the county court the same power as exists with reference to practice and procedure in the High Court. The power to make rules in the High Court is governed by section 17 of the Judicature Act, 1885. Under that section rules were made including order 11, rules 1 (*d*) and 2 of which regulate the present case. As regards the county court rules the important rule is order 51, rule 23 of the rules of 1889. That is a different rule from that which prevails in the High Court. Section 164 of the County Courts Act, 1888, however, enables the proper authorities to make any rules which might lawfully be made with reference to matters within the cognisance of the High Court, and I cannot say that such a rule as this might not lawfully be made. The rule, therefore, being within the powers of the proper authorities to make and authorizing the service which has been effected, I come to the conclusion that the objection raised could not have been sustained in the county court. It would, however, be an extraordinary thing if a person who wrongfully commences an action in the county could transfer it to and prosecute it in the High Court when it could not have been originally entertained there. In my judgment, therefore, when the action has been transferred to the High Court the defendant ought to have an opportunity of raising the objection that the case is one which could not originally have been entertained there.—Counsel, *H. Terrell* and *J. Sharpe*. Solicitors, *Andrew, Wood, & Co.*, for *H. J. Whiteside*, Whitehaven; *Helder, Roberts, Son, & Co.*, for *Brockbank, Helder, & Co.*, Whitehaven.

[Reported by J. I. Stirling, Barrister-at-Law.]

CHANDLER *v.* BRADLEY. Stirling, J. 14th and 17th Nov.; 13th Dec.

Settled Land Acts, 1882 to 1890—Tenant for Life—Payment to Tenant for Life to Secure Concurrence in Lease—Fine—Best Rent—Fraud on Powers—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 4, 6, 7, 45, 53, 54—Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 6—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 7.

Action. The question raised in this case was whether a lease granted by a tenant for life and his mortgagees was void on account of a payment having been made to the tenant for life which did not appear in the lease. The lease in question was granted to the defendant in 1892 by the mortgagees of the tenant for life, who were then in possession. The tenant for life concurred in the lease, and it was admitted that £21 had been paid to him to induce him to join in the lease. The lease contained no reference to this payment, and no notice was given to the trustees in accordance with section 45 (1) of the Act of 1882. On the death of the tenant for life the trustees brought this action asking that the lease should be declared void or set aside. The grounds alleged were that the £21 paid was in the nature of a fine, and as the lease was silent as to the payment of a fine the tenant for life must be taken to have exercised his power of leasing under the Act of 1890, section 7, and as in fact a fine was taken the power was badly exercised. It was also urged that the powers of a tenant for life being fiduciary, a bargain and sale of such powers vitiated the whole transaction.

Stirling, J., said that though no evidence had been produced by the plaintiffs that the lease in question had not been granted for the highest rent that could be obtained, yet the payment of £21 to the tenant for life was *prima facie* evidence that the lease had not been made for the "best rent" in accordance with the Act. The lease, therefore, did not fall within the provisions of the Settled Land Acts, and must be set aside.—Counsel, *Grosvenor Woods*, Q.C., and *D. N. Pollock; Graham Hastings*, Q.C., and *Micklem*. Solicitors, *A. R. & H. Steele; Layton, Sons, & Layton*.

[Reported by J. I. Stirling, Barrister-at-Law.]

FLOYD *v.* LYONS & CO. (LIM.). Kekewich, J. 17th Dec.

Water Rate—Covenant to pay Water Rate—Lessor and Lessee—Water Supplied for Domestic Use—Water Supplied for Trade Purposes—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17) s. 3—The New River Company's Act, 1852 (15 & 16 Vict. c. 160) ss. 35, 38, 40.

Summons. The plaintiff was owner and lessor of Nos. 18 and 19, Walbrook, E.C., of the ground floor and basement of which premises the defendants, J. Lyons & Co. (Lim.), the well-known refreshment contractors, were lessees for a term of thirty years. By the lease the defendants covenanted "not to carry on any noisome or obnoxious business or trade," but it was provided that "the use of the premises for the sale of refreshments" should "not be considered as a breach of this covenant." The lessor covenanted "to pay all rates, taxes, assessments, water rate, and other outgoings except the gas and electric light, now or hereafter to be imposed or assessed upon the said premises or on the lessor or lessees in respect thereof." The premises comprised in the lease were used in conjunction with adjoining premises at 20, Budge-row, by the

defendants wholly as a café for the sale and consumption therein of tea, coffee, and light refreshments, and the defendants paid the amount of £47 8s. to the New River Co. annually for water consumed in respect of the café the amount being made up as to £16 10s. for water consumed on the premises for domestic purposes, being assessed on the annual rental of the premises at the rate of 3 per cent., as to 18s. on another item, and as to £30 by special contract with the consumer for water consumed for the purposes of trade under section 40 of the New River Act, 1852. The defendants in paying the rent for the premises at 18 and 19, Walbrook, deducted one half of the £47 8s. as being the proportion of water rates payable in respect of those premises and therefore payable by the plaintiff. The plaintiff did not object to paying one half of the first two items mentioned above, but denied all liability in respect of the item of £30 for water used for trade purposes, and took out a summons raising the question, "Whether the covenant by the plaintiff obliged her to pay the sum charged by the New River Co. for the supply of water for the trade carried on upon the said premises by J. Lyons & Co. (Lim.)?" The plaintiff gave receipts for money received on account only. The whole premises comprised in the café were assessed for the purpose of water rate at the value of £550 annually. The New River Co.'s (Private) Act, 1852 (15 & 16 Vict. c. 160), incorporated the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), and the latter Act provides by section 1 for incorporation with special Acts, and that all clauses therein, save so far as varied expressly by the special Act, shall apply to the undertakers in, and be read as embodied in the special Act. By section 3, that "the expression 'water rate' shall include any rent, reward, or payment to be made to the undertakers for a supply of water. By section 68, that the water rate (except as thereinafter and in the special Act mentioned) shall be paid by and be recoverable from the person requiring, receiving, or using the supply of water, and shall be payable according to the annual value of the tenement supplied with water, and if any dispute arise as to such value, the same shall be determined by two justices. By section 70, that rates are to be paid quarterly in advance. By section 72, that owners of houses not exceeding £10 in annual value, and not the occupiers, shall be liable for water rate. By section 74, that if the water rate be not paid the supply may be cut off. The sections of the New River Company's Act, 1852, material to the case are: Section 35, which provides that the rate for supply of water for domestic purposes shall not exceed 3 per cent. where the annual value of the premises is over £200. Section 38, a supply of water for domestic purposes shall not include a supply for steam engines, . . . baths, . . . or for any trade, or manufacture, or business requiring an extra supply of water. Section 40, that the company may supply any person or body within their limits with water to be used within such limits for other than domestic purposes, at such rate and upon such terms and conditions as shall be agreed upon between the company and the person or body requiring such supply. On behalf of the plaintiff it was contended that a broad distinction was drawn between water consumed for domestic purposes and water consumed for trade purposes, which was a supply dependent on special contract between the company and the consumer under sections 38 and 40, and over which the lessor would have no control; and that it could not be within the intention of the parties that the lessor should covenant to pay an amount which she had no means of even estimating, and which was entirely dependent on the will of the lessee, who was not precluded, for instance, by the terms of his lease from carrying on the business of a manufacturer of mineral waters, and thus incurring an almost unlimited expense for the water used in his business. It was submitted, therefore, that the covenant only applied to water supplied for domestic purposes under section 35, the cost of which the lessor could at the time of granting the lease fairly estimate. The cases cited were: *The Direct Spanish Telegraph Co.* v. *Shepherd* (32 W. R. 717, 28 Solicitors' Journal, 787, 13 Q. B. D. 202), *Badcock* v. *Hunt* (37 W. R. 205, 22 Q. B. D. 145).

Kekewich, J., said that the application was unfounded. The question asked by the summons was practically, "When is a water rate not a water rate?" And the only answer proposed was, when it is a rate levied for water used for trade purposes, or for other than domestic purposes. That, in his lordship's opinion, was not a satisfactory answer. [His lordship read the definition of water rate in section 3 of the Act of 1847.] It might be that if water were used for some purposes the sum payable for the use of the water would not be strictly a rate, but that was not the case here. The defendant's business it was true was not expressly described in the lease, but the lease expressly gave them liberty to use the premises for the sale of refreshments, which would also include the use of water for refreshment purposes. The cases cited only decided that what a man agrees to pay is not a rate imposed by Act of Parliament, and had no bearing on the present point.—Counsel, *McSwinney*; *Ribton*. Solicitors, *I. G. Bullen*; *Edward Lee & Davis*.

[Reported by C. C. Hensley, Barrister-at-Law.]

High Court—Queen's Bench Division.

CROCKER AND OTHERS *v.* **STURGE AND OTHERS.** Div. Court. 7th Dec.

Marine Insurance—Meaning of "Final Port."

This was a commercial action tried by Mathew, J. The action was brought by underwriters at Lloyd's to recover a total loss under a policy of re-insurance effected by the plaintiffs with the defendants, who are also underwriters at Lloyd's. On the 2nd of December, 1895, the plaintiffs insured *The Talavera* under a policy which covered the vessel "at and from Sydney, N.S.W., while there, to Newcastle, and thence to any port or ports, place or places, on the west coast of South America and (or) islands adjacent, in any order, once or oftener while there, and thence to any port or ports of call, and (or) discharge in the United Kingdom and (or) continent of Europe between Bordeaux and Hamburg, both included, and for thirty days in port after final arrival, however employed." On the 30th of December, 1895, the plaintiffs desiring to reinsure part of their risk, effected a policy of reinsurance, which was stated to be upon the said ship "at and from Newcastle, N.S.W., to any port or ports, place or places, in any order on the west coast of South America, and for thirty days after arrival in final port, however employed." This was the policy now sued upon. On the 5th of January the vessel sailed from Newcastle, N.S.W., and arrived at Valparaiso on the 5th of February, where she discharged her cargo and remained there for more than thirty days. While there she loaded cargo for the United Kingdom, and sailed for Talcahuano in order to load some more cargo, and while proceeding there stranded and became a total loss. The plaintiffs paid the owner, under their policy, a total loss, and then sued the defendants under the policy of reinsurance. It was admitted that vessels from Newcastle to the west coast of South America sometimes discharged their cargo at more ports than one on the coast, and that vessels from the west coast for the United Kingdom sometimes load at more than one port on the coast. The plaintiffs contended that the vessel was covered by the policy until her arrival at Talcahuano and thirty days after. The defendants contended that she was only covered by the reinsurance to Valparaiso (her port of discharge) and thirty days after. *Cur. adv. vult.*

Mathew, J., held that the vessel was covered to any port or ports, place or places, on the west coast of South America, and for thirty days after she arrived at the last port on that coast before leaving for home, and that she was therefore covered at the time of the loss. Judgment for plaintiffs.—Counsel, *J. Walton*, Q.C., and *Percy Morris*; *Boyd*, Q.C. Solicitors, *Thomas Cooper & Co.*; *W. A. Crump & Son*.

[Reported by E. G. Stillwell, Barrister-at-Law.]

COWEN (Appellant) *v.* **TOWN CLERK OF KINGSTON-UPON-HULL** (Respondent). 21st Dec.

Parliament—Borough Vote—Disqualifying Alms—Reform Act, 1832 (2 & 3 Will. 4, c. 45), s. 36.

Appeal from the decision of the revising barrister for the borough of Kingston-upon-Hull, removing the name of the appellant from the occupiers' list of voters for the Central Division of that borough, upon the ground that he was disqualified under section 36 of the Reform Act, 1832, by the receipt of alms during the past year. The appellant is, and for some years has been, a brother of the charity known as the "Charterhouse," or "God's House," Hospital, in the said borough, and as such brother he has during all that time occupied a room in the said house or hospital, in respect of which he has been duly rated in the rates for the relief of the poor. Such rates, however, have been paid out of the lands of the charity. He has also been in receipt of a weekly allowance of 7s. and medical attendance and coals. The charity was founded by letters patent in 1384, in the reign of Richard II., in two messuages, called "Maison Dieu for thirteen poor men and thirteen poor women, feeble or old, to be called 'God's House of Hull,' so long as they are necessitous." Over them was appointed a master and warden, under obedience to whom the rest of the poor people, as well as brothers and sisters, should continue in perpetuity, and the said master was required to pay to each one of the said poor people 40s. annually for all their necessities, as well food as clothing—namely, to every one of them 8d. per week. By the letters patent the founders gave, granted, and confirmed unto the master and brethren and sisters the said messuages, &c., for their dwelling or foundation or endowment, to have and to hold unto the said master, brethren, and sisters and their successors for ever. The property so granted, with subsequent additions, forms the sources from which the revenues of the charity are derived. In 1752 the rents of the property had increased to a sum considerably in excess of the sum necessary for the current expenses and allowances of the house as it then stood. In 1755 a suit in chancery was instituted which resulted in a scheme for the better management of the house and the application of its revenues, and this scheme continued until, in 1872, a new scheme was formulated and legalized by the Charity Commissioners. That scheme, however, did not alter the existing state of the hospital beyond this, that the brethren and sisters of the Charterhouse were made removable at the pleasure of the town council, and on such removal his or her allowance was to cease. At present there are about eighty brethren and sisters, each of whom receives 7s. weekly. It was found as a fact that the houses and land forming the charity estate, and from whence the revenues are derived, are still vested in the master, brothers, and sisters. It was also found as a fact that one necessary qualification for election to the charity still is, that the brothers and sisters should be feeble or old and necessitous, and further, that they are elected by the town council. The brethren are required by the rules to keep within the hospital premises, and the gates are closed for the night at 10 p.m. Hitherto the brethren have always voted at parliamentary elections without objection. Upon the above facts the revising barrister held, on the authority of *Harrison* v. *Carter* (25 W. R. 182, 2 C. P. D. 26) and *Baker* v. *Town Clerk of Monmouth* (34 W. R. 64, 53 L. T. 668), that the appellant was disqualified under section 36 of the Reform Act, 1832, by the receipt of alms within the meaning of that section. The question now was whether the revising barrister was right in so holding. The respondent did not appear. *Cur. adv. vult.*

The Court (Hawkins, Cave, and Wright, JJ.) allowed the appeal.

Hawkins, J., read the following judgment: By the Reform Act, 1832, it is enacted that no person shall be entitled to be registered in any year as a voter in the election of a member or members to serve in any future

Parliament for any city or borough who shall within twelve calendar months next previous to the last (now, by 41 & 42 Vict. c. 26, s. 7, the 15th) day of July in such year, have received parochial relief or other alms, which by the law of Parliament now disqualify from voting in the election of members to serve in Parliament. The question we have to determine is whether, under the circumstances, the appellant was in receipt of such alms. It was not suggested that any of the appellants was in receipt of parochial relief; but it was objected that the appellants had received such other disqualifying alms as are mentioned in section 36, and this objection was upheld by the revising barrister on the authority of *Harrison* v. *Carter* and *Baker* v. *Town Clerk of Monmouth*. It would be difficult to point to any authoritative definition of the law of Parliament upon this subject, as the authorities are conflicting beyond the power of reconciliation. Many of them are to be found in Rogers on Elections, Part I., pp. 79, 189 *et seq.* It is stated by Whitelock, in his book on Elections, published in 1766, that persons who are, or who have been, within a certain time obliged to depend wholly or in part on eleemosynary assistance are disqualified by the common law, not only because from their indigence they were unable to contribute to the wages of their members, but also because from their dependent situation their voices were no longer free. Their receipt of alms, however, was only considered an evidence of inability which might be rebutted by circumstances. On the other hand, it was presumed that a voter continuing in possession of his freehold was not in a condition of disqualifying indigence, and that even parish alms paid to a freeholder did not invalidate his vote. In dealing with the question What are disqualifying alms, it is necessary always to bear in mind that the answer depends not upon whether the person whose voting capacity is challenged has been the recipient of alms in the popular sense of that term, but whether he has accepted such alms under such circumstances as by the law of Parliament as it existed when the Reform Act, 1832, was passed, would have disqualified him from voting. And it must be remembered that although the *onus* of proving a *primâ facie* title to vote rests on the person claiming to vote, the *onus* of proving affirmatively the disqualification to vote by reason of the receipt of alms is cast upon the objector. It is impossible to say that there was, when the Act of 1832 was passed, any fixed rule of parliamentary law which was applicable to every case. Each case of necessity depended, as it still does, upon its own particular circumstances. It is truly stated in Rogers, Part I., 193, that in many of the old boroughs the usage of the place and the decisions of the house or committee have determined the point—in fact, the usage made the law—and in one borough usage sanctioned that which would have been condemned in another. If usage may be taken into consideration, we have the very striking fact found by the revising barrister that for sixty-four years since the Reform Act was passed, and probably for many years before that time, these brethren have always voted without objection, and no one ever imagined that they were disqualified. This concession of the right to vote was strong evidence that, in fact, the relief was not deemed to be of a character to disqualify, and it would certainly be a strong measure to disqualify so large a number of voters without overwhelming proof of their disqualification. Such I fail to find in the case submitted to us. I am not concerned to question the soundness of the two judgments relied on by the revising barrister as the basis of his decision (*Harrison* v. *Carter* and *Baker* v. *Town Clerk of Monmouth*). On the contrary in each of these cases I think there was evidence to justify the finding of the court—namely, that there was that amount of poverty and such a receipt of alms to alleviate it as was calculated to destroy the independence of the recipient. But I do not concur in the revising barrister's opinion that those cases are decisive of the present case, for I think they are distinguishable in some substantial particulars. In *Harrison* v. *Carter* the lands forming the charity estate were devised to and vested in trustees, persons other than the claiming voter. Here they are vested in the brethren themselves; and the brethren, so long as they are such, live in houses of which they are for the time legal owners, and, though the right to occupy is dependent on the will of the trustees, the power of removal has never yet been exercised. Again, here the funds are to be distributed to feeble, old, or "necessitous" persons—"necessitous" not necessarily meaning persons in extreme poverty. In *Harrison* v. *Carter* they were to be shared by the poorest inhabitants, and the particular voter whose vote was questioned was so needy as that, the money being distributed according to actual necessity, he was awarded the largest amount given to any one family. In *Baker* v. *Town Clerk of Monmouth* poverty and inability to maintain themselves by their exertions were found as the condition of the claimants to vote, and each occupant of an almshouse was required to wear a badge, and it was not suggested that any occupant had any freehold interest in the house he occupied. [His lordship then referred to the cases of *Edwards* v. *Lloyd* (20 Q. B. D. 302), *Dix* v. *Kent* (39 W. R. 173), *Smith* v. *Hall* (12 W. R. 172), and proceeded:] The case of *Smith* v. *Hall* is, in my opinion, more applicable to this case than the case of *Harrison* v. *Carter*. I therefore, after much consideration, have arrived at the conclusion that the appellant is entitled to our judgment, with costs.

Cave and Wright, JJ., concurred. Appeal allowed.—Counsel, *Jelf*, Q.C., and *Grotrian*. Solicitors, *Rollit & Sons*, for *Rollit & Sons*, Hull.

[Reported by Sir Sherston Baker, Bart., Barrister-at-Law.]

GOODLOCK *v.* COUSINS. Div. Court. Dec. 10th.

Vendor and Purchaser—Judgment Debt—Seizure by Bailiff—Claimant of Goods—Sale—Title of Purchaser.

This was an appeal by the defendant from a judgment of Judge Ellicott in the Cheltenham County Court. The action was brought for the return of the plaintiffs goods and chattels—viz., a brown mare, two sets of harness, and a truck, which the plaintiff kept at an inn in which he was lodging. Whilst the plaintiff's goods were still there, judgment was obtained by a colliery company for coal supplied, and execution was levied, and included in the goods seized were the goods of the plaintiff. Upon the seizure the plaintiff gave a notice of claim to his goods pursuant to ord. 27, r. 1, of the County Court Rules, and upon this the bailiff gave the plaintiff the notice requiring deposit of value or security, which the plaintiff failed to comply with, and as a consequence his goods were sold. Thereupon the plaintiff brought an action against the purchaser of the goods for their value. The learned judge found as a fact that the articles claimed belonged to the plaintiff, but that the defendant had no notice of this, and he assessed their value and the damages for their detention at £20 15s., and gave judgment for the plaintiff for that amount. From this judgment the defendant appealed. Section 156 of the County Courts Act, 1888, provides that "where any claim shall be made to or in respect of any goods taken in execution under the process of the court, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, . . . or may give to the bailiff in the prescribed manner security for the value of the goods claimed, and in default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale to abide the decision of the judge. For the appellant it was contended that the decision was wrong inasmuch as by purchasing the goods at the sale he had acquired a good title to them, and that as the plaintiff had not complied with section 156 and the rules made in pursuance thereof he was debarred from bringing any action. For the respondent it was contended that the sheriff could confer no better title to the goods than the execution debtor possessed at the time of the sale, which the judge found was none, and that section 156 does not give any such title. The following cases were cited: *Chapman* v. *Speller* (19 L. J. Q. B. 239), *Davies* v. *Wise* (29 W. R. 804, 50 L. J. Q. B. 651), *Hills* v. *Renny* (29 W. R. 328, 5 Ex. D. 313), *Ex parte Villars* (22 W. R. 397, L. R. 9 Ch. 434), *King* v. *England* (33 L. J. Q. B. 145).

The Court (Wills and Wright, JJ.) allowed the appeal.

Wills, J., in giving judgment, said the question in issue was one of considerable importance. This was a sale which was brought within every condition of section 156. The sale of the goods by the bailiff was a sale by him in the carrying out of a duty imposed upon him by statute, and it seemed to him it would be inconsistent with the intention of the Legislature to hold that although the Act of Parliament ordered the bailiff to sell the goods, yet he could not give a good title to them. The Act could never have intended that the bailiff should sell nothing but a law suit. It would be mere nonsense to hold that the words "shall sell such goods" enabled the bailiff to sell the goods, but not to give a good title.

Wright, J., agreed. Appeal allowed. Judgment for defendant with costs.—Counsel, *Stroud*; *Cranston*. Solicitors, *Martin & Co.*, for *Heath*, Cheltenham; *Peacock & Goddard*, for *Lamb*, Cheltenham.

[Reported by E. G. Stillwell, Barrister-at-Law.]

BREAY *v.* BROWNE. Div. Court. 15th Dec.

Corporation—Meeting of Members—Refusal of Chairman to Submit Resolution—Right of Action.

This was an appeal by the defendant from the verdict and judgment given for the plaintiff at the trial of the action in the City of London Court. The plaintiff was a member of the Royal British Nurses Association, and was desirous of proposing a resolution at the annual meeting of the association to be held on the 22nd of July, 1896. The defendant was the chairman of the meeting, and he declined to permit the plaintiff to move her resolution at the meeting on the ground that she had not complied with a bye-law of the association, which required notice in writing of intended resolutions to be forwarded by registered letter to the secretary prior to the date of the meeting. The plaintiff had sent a written notice of her resolution in a letter by express post, and she stated in her evidence that the letter was registered, and she produced at the meeting a certificate of resolution; but the chairman ruled that there was nothing to connect the certificate with the letter that had been received. The plaintiff alleged that by the defendant's refusal to submit her resolution to the meeting she had lost the benefit or advantage of having the resolution submitted to, or voted on, by the meeting, and that the plaintiff's rights were thereby infringed, and she was otherwise damnified. Alternatively the plaintiff said that the defendant wilfully or maliciously refused to submit the resolution to the meeting. The jury gave a verdict for the plaintiff, with one farthing damages. It was contended for the defendant that the plaintiff's claim disclosed no cause of action, and that there was no evidence in support of the plaintiff's claim which could properly be left to the jury. For the defendant it was contended that the defendant's refusal to put the plaintiff's resolution was a tort for which an action would lie: *Ferguson* v. *Lord Kinnoul* (9 C. & F. 12). The defendant had been actuated by an indirect motive. The plaintiff was injured because discussion was prevented on a subject affecting the management of the association in which the nurses had a financial interest. *Ashby* v. *White* (2 Lord Raym. 955) was referred to.

The Court (Wills and Wright, JJ.) allowed the appeal.

Wills, J., said that there was no evidence that the defendant had acted maliciously, although it might be that he had committed an error of judgment. Some people thought that the best way to show their knowledge of legal principles was to act in a spirit of extreme technicality, but an erroneous judgment did not constitute malice. Then it was said that the defendant in cross-examination expressed an unfavourable opinion of the persons who were associated with the plaintiff in this matter, and it was argued that the defendant had acted dishonestly and improperly in his duties of chairman. It would add great terror to persons presiding at public meetings if the court were not to protect chairmen

under circumstances such as these. There was no evidence that the defendant had acted otherwise than honestly in the decision which he gave. Questions were always cropping up at public meetings that called for an immediate decision by the chairman, and so long as he decided honestly no action could be brought against him. Cases like this must have occurred hundreds of times, but there was no precedent for such an action as this. The cases cited in support of the argument for the plaintiff had no application to this case. The appeal must be allowed, and judgment entered for the defendant.

WRIGHT, J., said that the plaintiff might possibly have sustained a wrong, but she had mistaken her remedy. Her right was not a personal one, but belonged to her as a member of the corporation. The plaintiff had suffered no personal damage. Her proper course was to bring an action in the name of herself and other shareholders against the chairman and the directors asking for an injunction restraining the chairman from refusing to put the resolution and for a *mandamus* to compel them to convene a fresh meeting. There was authority for such an action in *Pender* v. *Lushington* (6 Ch. D. 70). It was clear there was no evidence of malice, but even if there were it was not a case for a separate personal action. Appeal allowed.—COUNSEL, *Muir Mackenzie; Blake Odgers*, Q.C., and *Scarlett*. SOLICITORS, *Pontifex, Hewitt, & Pitt; Mear & Fowler*.

[Reported by F. O. ROBINSON, Barrister-at-Law.]

DEAN AND CHAPTER OF ST. ASAPH *v.* **THE OVERSEERS OF THE PARISH OF LLANRHAIADR-YN-MOCHNANT AND THE ASSESSMENT COMMITTEE OF LLANFYLLIN UNION.** Div. Court. 17th Dec.

RATING—DEDUCTION—RECTORIAL TITHES—REPAIRS OF CHANCEL.

The rectory of Llanrhaiadr-yn-Mochnant was vested in the Dean and Chapter of St. Asaph by an Act of 29 & 30 Car. 11, and the rent, issues, and profits of the rectory were appropriated to the special purpose of repairing the Cathedral of St. Asaph and of employing the residue towards the better maintenance of the choir. In estimating the rateable value of the tithe rent-charge issuing from the rectory, the Dean and Chapter claimed to deduct from the gross amount of the tithe rent-charge a sum representing 1 per cent. upon the gross amount, as money spent in repairing the chancel of the parish church of Llanrhaiadr. It was proved that it had been the custom to spend some portion of the tithe rent-charge upon repairs of the chancel. It was contended on behalf of the Dean and Chapter that the deduction was a proper one on the analogy of the allowance for ecclesiastical dues, which was made in *Rex.* v. *Joddrel* (1 B. & A. 403) and *Reg.* v. *Capel* (12 A. & E. 382). For the overseers it was argued that, as the rector was liable to repair the chancel *qua* rector and not by way of a charge on the tithe rent-charge, even under the common law the deduction would not be a proper one, but here, an Act of Parliament having specially appropriated the tithe rent-charge to a particular purpose, there was no room for saying that any part of it could be expended upon the repairs referred to.

THE COURT (WILLS and WRIGHT, JJ.) disallowed the deduction.

WILLS, J., said, with regard to the cases cited, that the *ratio decidendi* in those cases was that the produce of the rectory was the only fund out of which the dues referred to could come. But the liability to repair the chancel was a personal liability, imposed upon the rector by virtue of his tenure of the office; it was one which would subsist were there no funds derived from the rectory whatever.

WRIGHT, J., concurred.—COUNSEL, *Marshall*, Q.C., and *Ellis J. Griffiths; Stephenson Moore*. SOLICITORS, *Robbins & Co.*, for *Pughe & Jones*, Llanfyllin; *Petersen*.

[Reported by C. G. WILBRAHAM, Barrister-at-Law.]

BRADFORD (Appellant) *v.* **DAWSON AND PARKER** (Respondents). Div. Court. 19th Dec.

GAMING—PAYMENT IN LICENSED HOUSE OF BETS WON—NO EVIDENCE AS TO MAKING OF BETS—BETTING HOUSE ACT, 1853 (16 & 17 VICT. c. 119), s. 3.

This was a case stated by E. Fenwick, Esq., one of the metropolitan police-court magistrates. The respondent Dawson was summoned for that he on certain dates in May, 1896, being a person using the "Duke's Head" beerhouse, Blackfriars-road, did use the same for the purpose of betting with persons resorting thereto contrary to section 3 of the Betting House Act of 1853 (16 & 17 Vict. c. 119). The respondent Parker was summoned for that he on the same dates, being the occupier of the said "Duke's Head," did knowingly and wilfully permit the same to be used by the said Dawson for the purpose of betting with persons resorting thereto, contrary to the same section of the said Act. The magistrate found as facts that Parker was the licensee of the said house. That Dawson was at the said house on the said dates for the purpose of paying a number of persons who resorted thereto for the purpose sums of money which they had won from him on bets made by them with him on the results of horse-races, and that he paid to them the money due to them, and that Parker had full knowledge of the nature of the transactions carried out by Dawson. The magistrate further found that there was no evidence before him that Dawson received any money there in respect of such bets or that the bets in respect of which the money was paid had been entered into there. On behalf of the prosecution it was contended that the habitual user of the house by a bookmaker for the purpose of meeting customers and settling up with them any bets with regard to which they were winners, amounted to a user of the house contrary to the said Act, and that the paying out of bets was a substantial and essential part of the transaction of betting. On the part of the defendants it was argued that the transactions which it was proved Dawson had been a party to could in no way be said to come within the section of the Act in question. The magistrate was of opinion that the facts proved did not in point of law constitute the commission by Dawson of an offence against the Betting House Act, 1853, and he dismissed the summons against him. With regard to Parker, it was admitted by the prosecution that, if the user by Dawson was not illegal, the case against the licensee of the house failed also, and the magistrate therefore dismissed the summons against him also. The prosecutor, the Commissioner of Police, appealed against this decision. The question for the opinion of the court was whether the decision of the magistrate was right in law.

THE COURT (HAWKINS, CAVE, WILLS, WRIGHT, and KENNEDY, JJ.) dismissed the appeal.

HAWKINS, J.—This appeal must be dismissed. The Act under which the respondents were summoned was passed to prevent the demoralization of improvident persons. Section 3 provides that licensed houses shall not be used for the purpose of betting with persons resorting thereto. The only evidence before the court in this case was that persons had resorted to the house for the purpose of being paid money over bets which they had won, and that they were there so paid. The question is whether the making of such payments is "betting" within the meaning of the Act. On reading the section I unhesitatingly come to the conclusion that the use of the word "betting" there does not mean "paying a bet." Payment, no doubt, is a very important element in respect of betting, but it does not follow that "payment" is "betting." The contract of betting had already been made, and the mere act of its payment does not come within the provisions of the Act.

The other learned judges concurred, but

WRIGHT, J., added: I confess I have some doubts. The Act seems to strike at betting altogether on licensed premises. The act of payment is an important element in betting, for if they were not paid they would not be made, and I have doubts whether the payment is not part of the business of betting. However, as this is a penal Act it ought to be construed strictly, and I therefore concur in the judgment of the rest of the court. Appeal dismissed.—COUNSEL, *Danckwerts; Bigham*, Q.C., and *Grain; L. W. Kershaw*. SOLICITORS, *Wontner & Sons; C. Butcher*.

[Reported by E. G. STILLWELL, Barrister-at-Law.]

CONSERVATORS OF HAYES COMMON *v.* **BROMLEY DISTRICT COUNCIL.** Div. Court. 17th Dec.

COMMON—DIGGING FOR GRAVEL BY HIGHWAY AUTHORITY—ORDER OF JUSTICES—DISCRETION TO MAKE OR REFUSE ORDER—COMMONS ACT, 1876 (39 & 40 VICT. c. 56), s. 20.

This was a case stated by justices. The question was whether the justices had a discretion under the Commons Act, 1876, s. 20, to grant or refuse an order enabling the highway authority to dig for gravel, &c., upon a common which came under the category of those referred to in the section. Under the power granted by the Highways Act, 1835, s. 51, the surveyor of highways of the District of Bromley had exercised the right of digging for gravel upon Hayes Common. The Commons Act, 1876, s. 20, enacts that no surveyor of highways shall dig for gravel, &c., upon any of the commons therein referred to without the consent of the Conservators of the common, or, in default of such consent, without an order of two or more justices, "who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient." Until 1896 the Conservators of Hayes Common permitted the surveyor and the Bromley District Council, who was the successor of the surveyor, to continue digging for gravel upon the common. But subsequently the consent was withheld. The District Council then applied for an order from the magistrates, which was granted by them on the grounds that they had no discretion to refuse to make it.

THE COURT (WILLS and WRIGHT, JJ.), ordered the case to be sent back to the justices, on the ground that they had a discretion to make or refuse the order.—COUNSEL, *Rawlinson; Macmorran*, Q.C., and *Clarke Williams*. SOLICITORS, *Birkett & Horner; May, Sykes, & Batten*.

[Reported by C. G. WILBRAHAM, Barrister-at-Law.]

LAW SOCIETIES.

THE INCORPORATED LAW SOCIETY OF LIVERPOOL.

The following are extracts from the report of the committee of the society:—

Members.—The society now consists of 390 members. The number of barristers and others, not being members, who subscribe to the library is 40.

Legal education.—The work of the Liverpool Board of Legal Studies during the past session has been of the most satisfactory character. The new scheme, which was referred to in the committee's last report, and which has been in operation throughout the whole of last session, has met with a substantial measure of success, and the board can now fairly claim to offer to Liverpool students a complete course of tuition in their own city for the intermediate and final examinations of the Incorporated Law Society of the U.K. Courses of lectures have been delivered on Conveyancing, Equity, Bankruptcy, Roman Law, Jurisprudence, Constitutional Law, Political Economy, Law of Torts, and Real Property Law. In addition to these, classes have been held on Probate and Divorce, Practice of the Courts, Common Law, Criminal, Admiralty, and Ecclesiastical Law. A course of lectures on the Law of Trade-Marks, &c., for non-professional students was also delivered by Mr. Egerton Stewart Brown, Barrister-at-Law, at University College, under the auspices of the board.

Country representation on the Council of the Incorporated Law Society, U.K.—The Associated Provincial Law Societies have for some time past been

considering this question, and at a meeting of representatives of these societies held in London on the 9th of April last, the following resolutions were passed: "That the present mode of selection and election of candidates for the Council of the U.K. Society is unsatisfactory, and that it is desirable to amend the same." "That the desired amendment can best be effected by a scheme for the division of the country into districts, and the allocation of a certain number of seats to each, the districts being arranged with due regard to geographical position, and the number and influence of the law societies therein." A scheme was accordingly prepared which was adopted at a meeting of the societies held in London on the 24th of July last.

Notarial certificates.—The attention of the committee was drawn to the inconvenience and loss of time caused to notaries in cases where the Lord Mayor's certificate had to be appended to their own in verifying documents, by their being required to attend in person before the Lord Mayor. The committee therefore approached the Lord Mayor on the subject, with the result that a permanent register containing the seals and signatures of all Liverpool notaries is now kept at the Town Hall. Any notary who has not yet signed the book can do so on attending upon the Lord Mayor's secretary at the Town Hall.

Assimilation and extension of trustees' investment powers.—Early in the present year the committee were approached by the chairman of the Liverpool Stock Exchange with a view to obtaining the co-operation of the society in the efforts which were being made by the council of the Associated Stock Exchanges to assimilate and extend the powers conferred by the Trustee Act, 1893, the Trusts (Scotland) Amendment Act, 1884, and Orders of the Court of Chancery. The committee, after considering the Stock Exchange memorandum, a copy of which had been forwarded to the Lord Chancellor, decided to present a memorial in support of the proposals contained in such memorandum, subject to certain modification. At the annual provincial meeting of the Incorporated Law Society of the United Kingdom, held at Birmingham in October last, the following resolution, upon the motion of the president of this society, was unanimously passed: "That the council of the Incorporated Law Society should take into consideration the subject of the investments by trustees with a view to their extension and assimilation."

Stamping transfers of mortgage.—The committee are in further communication with the Incorporated Law Society of the United Kingdom, as to obtaining from the Inland Revenue authorities an indemnity in respect of deeds stamped in accordance with the practice hitherto prevailing—viz., 6d. per cent. on the amount transferred, whether the transfer be of the whole or a part only of the original debt. At present the Commissioners are understood to hold that in transfers where a part of the original debt has been repaid, and the mortgagor joins to transfer the balance, and there is a new proviso for redemption, then, in addition to 6d. per cent. on the amount transferred, the deed also requires either a fixed stamp of 10s. or *ad valorem* duty up to 10s., at 6d. per cent. on the amount at any time secured.

Land transfer.—Towards the end of last year the Council of the Incorporated Law Society of the U.K. considered the desirability of promoting a Bill dealing with this subject. The general opinion appeared to be, that, as both political parties were committed to the Land Transfer Bill, which had been introduced by successive Lord Chancellors, the measure would sooner or later become law unless an alternative Bill were presented. The Council of the Incorporated Law Society of the U.K., therefore, instructed Mr. Wolstenholme to draft a Bill, the objects of which were to assimilate, so far as the subject-matter would permit, the dealings with land to the dealings with registered stocks and shares; to prevent the necessity for repeated investigation of title; to relieve a purchaser from all inquiries into equitable interests, and to constitute a real representative to convey the fee. The Bill, together with one prepared on different lines by the ex-president of that society (Mr. Budd), was considered by the committee, who approved of the principles of Mr. Wolstenholme's Bill in so far as they simplified the title to, and transfer of, land; but they were not prepared to give unqualified support to the provisions of parts 6 and 8 of the Bill, which related to the establishment of a registry for settlements, cautions, and inhibitions. A resolution, similar in effect, was passed at a meeting of the Associated Provincial Law Societies, held in London on the 29th of November, 1895. Having regard to the opinion of Mr. Wolstenholme that a system of cautions and inhibitions was essential to getting the Bill through Parliament, the Incorporated Law Society of the U.K. finally decided to forward the Bill, as drawn by him, to the Lord Chancellor, with a request that he would consider the same in connection with any scheme affecting the transfer of land which the Government might decide to introduce into Parliament. No Bill, however, was introduced during the past Session.

Lancashire Sittings.—This subject has again occupied much time and thought on the part of the committee. In November last, consequent upon a communication received from the committee of the Manchester Law Association, a deputation, consisting of the president of this society and Mr. C. H. Morton, together with three members of the Manchester Law Association (the president and Messrs. Milne and Cooper), waited upon Lord James of Hereford at the Manchester Assize Courts on the 21st of November, 1895, when the subject was fully discussed. His lordship stated that he did not advocate any change which would lead to the absorption of the Palatine Court in the High Court. It was determined to again approach the Lord Chancellor with a view to the introduction by the Government of a Bill on the lines of that introduced into Parliament by Mr. W. H. Holland in the previous Session. A Bill was prepared, which differed from the previous Bill by excluding Chancery administrative work. A deputation, introduced by the Right Honourable Sir James Fergusson, M.P., consisting of representatives of the Chambers of Commerce of Liverpool, Manchester, Blackburn, Oldham, Barrow-in-Furness, Warrington, and Wigan; the principal shipping and trade associations of Liverpool, and Manchester; the corporations of Liverpool, Manchester, Bootle, Preston, and Burnley; the Mersey Docks and Harbour Board, the Incorporated Law Society of the U.K., the law societies of Liverpool, Birkenhead, Manchester, Preston, Blackburn, Bolton, Lancaster, St. Helens, Ashton-under-Lyne, Staleybridge, and North Lonsdale, and supported by various city and county members, waited upon the Lord Chancellor on the 26th of February last. This society was represented by Mr. J. Lawrence (president), Mr. F. Gregory (vice-president), and Mr. J. W. Alsop. The Bill was presented to the Lord Chancellor, who, after hearing the views of the deputation, expressed his sympathy with the objects desired, but asked to be supplied with information and statistics shewing the working of the existing assize system in the county, and the necessity for the proposed change. In compliance with his lordship's request a statement was prepared and sent to him. The committee have not, as yet, received any reply from the Lord Chancellor, but the following official notification has been issued by order of the Lord Chief Justice: "The civil business at Manchester and Liverpool will, for four successive assizes, from the 2nd of November, be taken by Mr. Justice Kennedy. All interlocutory applications to the judge in chambers in the Queen's Bench Division, which are proceeding in a Lancashire district registry, and for which Manchester or Liverpool is designated as the place of trial, will, from now till the 12th of August, 1897 (vacations excepted) be heard by Mr. Justice Kennedy at Manchester or Liverpool whilst circuit is proceeding, and when circuit is not proceeding in his room at the Royal Courts of Justice until further notice. For the next ensuing assize, beginning on the 14th of November at Liverpool, and for the resumed assize at Manchester beginning on the 30th of November, commercial causes may, with the leave of the judge in chambers obtained on summons, be entered for trial in a separate list to be entitled the 'Commercial List.' Commercial cases already set down for trial in the usual way may, in like manner, be transferred to the Commercial List. The procedure as to the entry of Manchester and Liverpool causes in the Commercial List will, so far as practicable, be the same as that followed in regard to the commercial causes in London. So far as it may be found convenient, days will be fixed for trial in the Commercial List."

Police as public prosecutors.—During the year the attention of the committee has been directed to cases in the police-courts in which police constables have appeared to conduct prosecutions. The committee have been in communication with the clerk to the magistrates upon the subject, and pointed out to him that in cases where the police constable is neither the complainant nor the informant he has no right to conduct the prosecution, and they have received an intimation from the magistrates' clerk that he agrees with the view taken by the committee, and that in any case where objection is properly taken to a constable appearing he will not be allowed to conduct the case.

LAW STUDENTS' JOURNAL.

NORWICH LAW STUDENTS' SOCIETY.

On the 15th ult. the members of the Norwich Law Students' Society dined together.

The chair was occupied by the president of the society (Mr. G. F. Cooke), while his Honour Judge Addison, Q.C., filled the vice-chair. After "The Queen" had been proposed by the chairman and the toast had been loyally honoured,

Mr. C. G. Emerson proposed "The Profession," desiring, he said, that non-members of the profession should live in full accord with the *dictum* of Mr. J. A. Froude—namely, that the best company a man could possibly obtain was to be found in an assembly of lawyers. There was no profession with a finer history than that of the law, none which had more inspiring traditions, and none which could boast of such a long roll of illustrious and great men. It was related that Carlyle, annoyed by the conversation of a juvenile curate in overpraising the grandeur and dignity of his profession, asked him who was archbishop contemporary with Johnson. If Carlyle had put a corresponding question to a member of the legal profession, the reply would have been: "Mansfield and Thurlow," for Johnson said there was only one man in England whom he would prefer to meet, and that was Thurlow, and when he had to meet him he would wish to know it the day before. The present occupants of the judicial bench maintained the traditions handed down by their illustrious predecessors. In one or two respects they had improved upon them. Not long ago he listened to a political debate in the North of England on the necessity or otherwise of establishing commercial courts to deal with subjects requiring a technical knowledge of the various processes of manufacture, when there was expressed admiration for the deep technical knowledge displayed by our judges, and of the ready way in which they grasped details with which they were not previously acquainted. The question of the judges' impartiality was not touched upon—it was taken for granted. In Norfolk they had a county court judge who had won the esteem of both the advocates and the public at large for the unvarying courtesy and patience he always displayed, sometimes on rather trying occasions.

Mr. Eversley replied for the bar.

Judge Addison, Q.C., in the course of a very genial speech, said that he always liked to dine with and to be in the company of lawyers. Young men ran away from home to join the army, to go to sea, or to engage in religious work. But no one was ever heard to run away from home to enter the law. The reason was that the worst part of the legal profession was at the beginning of it. A taste for the law was an acquired one.

There was nothing very attractive about it in what the student had to do. The Bankruptcy Act, the Companies Act, and the Settled Estates Act, were not entrancing subjects, not even when varied by the 7,000 cases in the Annual Practice. The study of the law at the commencement was admittedly not pleasant.; but as they proceeded, although the examiners had made it a little more difficult than formerly, and got to the practical business, then they liked it more and more. One reason for this was that the law touched every phase of social life, commercial, scientific, literary, sporting, and thus it had the interest of variety, which gave the lawyer an acquaintance with every branch of learning. His honour pointed to many living instances of eminent judges and great lawyers who were authorities on other subjects than that of law.

The President, in giving "Prosperity to the Norwich Law Students' Society," stated that the society was in a very flourishing condition. The great object of it was to enable the younger members of the profession to gain experience. Between twenty and thirty articled clerks in Norwich belonged to the society, which was, on the whole, fairly well supported.

Mr. C. Morton Baker, the hon. secretary, who responded, said that the society had proved itself to be a most useful institution. The educational advantages it offered justified its existence. It helped also to bring members of the profession more in touch the one with the other, and to promote a more lively *esprit de corps* among them. In the movement towards decentralization as opposed to centralization the lawyers should be foremost by instituting that reform among themselves.

After other toasts, the proceedings terminated.

NEW ORDERS, &c.

THE BANKRUPTCY ACTS, 1883 AND 1890.

Whereas by virtue of certain Orders dated respectively the 31st March, 1890, the 31st December, 1890, and the 30th July, 1896, the Board of Trade have appointed Edwin Leadam Hough, Harold de Vaux Brougham, and Alfred Henry Wildy to be Official Receivers for the Bankruptcy District of the High Court, and the Board of Trade have directed that as regards all bankruptcy proceedings in the High Court, the estates of debtors, and the duties of Official Receivers in relation thereto, shall be distributed amongst and performed by the said Edwin Leadam Hough, Harold de Vaux Brougham, and Alfred Henry Wildy, as in the said Orders particularly mentioned.

And whereas it is desired to alter and adjust the distribution of the said debtors' estates and the duties in relation thereto amongst the said Official Receivers of the High Court.

Now, therefore, the Board of Trade hereby order that, as regards all bankruptcy proceedings instituted under the Bankruptcy Acts, 1883 and 1890, which on the 31st day of December, 1896, are pending in, or which after that date may be instituted in, or transferred to, the High Court, each of the several Official Receivers specified in the second column of the Schedule hereto, shall, in respect of the proceedings in which the initial of the first surname of the debtor or debtors is any of the letters specified opposite to the name of such Official Receiver in the first column, be the Official Receiver of the estates of the debtors in such proceedings, and discharge the duties of such Official Receiver in relation to such estates.

Dated this 21st day of December, 1896.

By the Board of Trade,
JOHN SMITH, Inspector-General in Bankruptcy, duly authorized in that behalf by the President of the Board of Trade.

The SCHEDULE above referred to.

FIRST COLUMN.		SECOND COLUMN.
A to F inclusive	...	Mr. Edwin Leadam Hough
G to O inclusive	...	Mr. Harold de Vaux Brougham.
P to Z inclusive	...	Mr. Alfred Henry Wildy.

LEGAL NEWS.

OBITUARY.

The death is announced of Mr. JAMES CUDDON, chairman of the Law Union and Crown Fire and Life Insurance Company of London, in his 81st year. Mr. Cuddon was the eldest son of Mr. James Cuddon of Norwich. He was called to the bar in 1862. In 1874 he was elected chairman of the Law Union Insurance Company (of which he was one of the founders), and when the Crown Life Insurance Company was amalgamated with it he was unanimously elected chairman of the united board.

APPOINTMENTS.

Mr. EDWARD H. RIDGE, solicitor, of 15, Bedford-row, London, has been appointed a Commissioner for Oaths. Mr. Ridge was admitted in August, 1883.

Mr. W. G. CARN, of 2, Broad-street-buildings, E.C., and Kingston-on-Thames, solicitor, has been appointed a Commissioner for Oaths. Mr. Carn was admitted in October, 1890.

CHANGES IN PARTNERSHIPS.

DISSOLUTIONS.

ROBERT WOOD and THOMAS WOOTTON, solicitors, Fish-street-hill, London (Wood & Wootton). Dec. 25. The said Robert Wood is retiring from the firm, and the said Thomas Wootton will continue to carry on the business under the style or firm of Wood & Wootton.

[*Gazette*, Dec. 25.

The partnership lately existing between Mr. J. H. GOULD and Mr. E. GEOFFREY CHUBB, solicitors, of Nos. 34 & 36, Gresham-street, London, has been dissolved, and Mr. E. Geoffrey Chubb is carrying on the practice at the above address.

GENERAL.

A telegram from Melbourne states that the Australian colonies have selected the Hon. S. J. Way, Chief Justice of South Australia, to represent Australia on the Judicial Committee of the Privy Council.

Mr. S. Pope, Q.C., will preside at the complimentary dinner to be given to Mr. M'Connell, Q.C., by the members of the Northern Circuit, at the Hotel Métropole, on January 16, in celebration of his recent appointment as chairman of the County of London Sessions.

It is announced that during the absence of Mr. Justice Vaughan Williams on the Western Circuit, for which he leaves London on January 11 next, companies winding-up business, &c., will be taken by Mr. Justice Romer in his own court every Monday. Mr. Justice Vaughan Williams will return to London about the middle of February next.

The following are the arrangements made by the judges of the Queen's Bench Division for holding their courts during the ensuing Hilary sittings, viz.—Cave, Vaughan Williams, Lawrance, Wright, Collins, Bruce, and Kennedy, JJ., will be the judges who will sit to form Divisional Courts; the Lord Chief Justice, Pollock, B., and Hawkins, Mathew, Day, Grantham, and Charles, JJ., will sit to try actions; and Wills, J., will be in attendance at judges' chambers.

The following are the commission days fixed by the judges (Mathew and Vaughan Williams, JJ.) for holding the winter assizes on the Western Circuit: Devizes, Monday, the 11th of January (special jury cases being taken on the 13th of January); Dorchester, Friday, the 15th of January (special juries on the 18th of January); Taunton, Tuesday, the 19th of January (civil business on the 22nd of January); Bodmin, Monday, the 25th of January; Exeter, Saturday, the 30th of January (special juries, the 2nd of February); Winchester, Friday, the 5th of February (special juries, the 8th of February); Bristol, Friday, the 12th of February (special juries, the 15th of February). Vaughan Williams, J., will go round the circuit alone until Exeter is reached, when Mathew, J., will join him.

The following are the arrangements made for hearing probate and matrimonial causes during the ensuing Hilary sittings: A Divisional Court will sit on Tuesdays, 2nd of February, 3rd of March, and 6th of April. Undefended matrimonial causes will be taken on Monday, 11th of January, Tuesday 12th, Wednesday 13th, and Thursday 14th, and on each Monday during the sittings. Special jury causes will be taken from Friday, 15th of January, to Thursday, 4th of February, inclusive. Probate and defended matrimonial causes for hearing before the court itself will be taken after the special juries are finished. Common jury causes will be taken on and after Thursday, 25th of February. Supplemental lists will be published from time to time during the sittings, and three days' notice will be given when such lists will be proceeded with. Summonses before the judge will be heard at 11 o'clock, and motions will be heard in court at 12 o'clock on Monday, 11th of January, and on every succeeding Monday during the sittings.

At the last sitting of the Windsor County Court, the judge, Sir Alfred Marten, Q.C., says the *Times*, decided a case of much importance in regard to the liability of solicitors to witnesses whom they have subpœnaed to attend on a trial in which the solicitors are acting for one of the parties to the action. William Tripp, of Maidenhead, sued Messrs. Ward & Thomas, solicitors, of the same town, for £2 10s., the balance of his charges for attending under subpœna for two days in the Queen's Bench Division in London, on behalf of the defendant, in the trial of the action of *Elliott* v. *Arman*. The plaintiff had been served with a subpœna issued by the London agent of the defendants, and 10s. was at the same time tendered for railway fare. The trial ended in a verdict for the defendant, with costs, and the latter, as taxed, included an item of £2 3s. for the charges of Mr. Tripp, the present plaintiff. This and the other taxed costs were paid by Mr. Elliott to the London agent of Messrs. Ward & Thomas, and the latter had duly accounted to their client, Mr. Arman, for that amount, but the latter still owed them on account of the action a sum of more than £20. The plaintiff contended that, as the defendants had received the amount from the plaintiff in the previous action under the taxation of the costs, he was entitled to it as money received by them for his use. His honour, in giving judgment, reviewed the cases, and held that, in the absence of a special agreement by the solicitors to be liable to the witness, the latter could not recover against them, and that the defendants received the costs under the taxing order for their client, who was the party against whom the present claim should have been made. Accordingly he gave judgment for the defendants, with costs.

WARNING TO INTENDING HOUSE PURCHASERS AND LESSEES.—Before purchasing or renting a house, have the Sanitary Arrangements thoroughly Examined, Tested, and Reported Upon by an Expert from Messrs. Carter Bros., 65, Victoria-street, Westminster. Fee quoted on receipt of full particulars. (Established 21 years.)—[ADVT.]

THE PROPERTY MART.

SALES OF ENSUING WEEK.

Jan. 7.—Messrs. H. E. Foster & Cranfield, at the Mart, at 2 p.m.:

REVERSIONARY LIFE INTERESTS:

Of a lady aged 25, in £7,377, receivable on decease of a lady aged 56 and gentleman aged 67; also of same lady in £9,180, on decease of lady aged 55. Solicitor, Walter B. Styer, London.

REVERSIONS:

To a moiety of about £1,000, on the decease of a lady aged 45, with policies. Solicitors, Keighley, Arnold, & Sismey, London.

To one twenty-fourth of Trust Fund of about £12,000; also one thirty-sixth of same Estate; on death of lady aged 50; together with one-sixth of a Trust Fund of £4,000, on same life. Solicitors, Oldfield, Bartram, & Oldfield, London.

To one-fifth of £7,166 15s. 9d. Two and Three-Quarters per Cent. Stock, on death of lady aged 59; also Life Interest of lady, aged 43, in £396 Railway Stock, with policy. Solicitors, Crosse & Sons, London.

POLICIES OF ASSURANCE:

For £3,000, £1,000, £1,000, £1,000, £1,000, £688, and £500, in leading Companies. Solicitors, Terry, Sherlock, & King, Abbott & Hudson, H. Garrard Clarke, all of London; W. J. S. & J. A. S. Scott, Newcastle-on-Tyne; and Wiltshire & Son, Great Yarmouth.

SHARES:

In A. G. Scott & Co. (Limited) and London Trading Bank (Limited). Solicitors, Downey & Linnell and Rose-Innes, Son, & Crick, of London.

(See advertisements, back page of this issue.)

Mr. J. T. Passmore, of West Kensington, has taken into partnership Mr. H. J. Cookes, who for eight years has been with Messrs. Debenham, Tewson, Farmer, & Bridgewater. The style of the firm will be "Passmore & Cookes," Auctioneers, Estate Agents, and Valuers, Avon Lodge, West Kensington, W.

WINDING UP NOTICES.

London Gazette.—Friday, Dec. 25.

JOINT STOCK COMPANIES.

Limited in Chancery.

Crandall's Automatic Cycle Rest Syndicate, Limited—Creditors are required, on or before Feb 1, to send their names and addresses, and the particulars of their debts or claims, to James Edward Ward, 14, Temple st, Birmingham Coley & Coley, Birmingham, solors to the liquidator

Moritz, Limited—Creditors are required, on or before Jan 31, to send their names and addresses, and the particulars of their debts or claims, to James Sinton and George Albert Edward Smith, 28, Berners st G. A. King, Cannon st, solor to the liquidators

Pelaez Silver Mines, Limited—Petn for winding up, presented Dec 21, directed to be heard on Jan 11. Steadman & Van Praagh, Old Broad st, petners' solors. Notice of appearing must reach the abovenamed not later than 6 o'clock in the afternoon of Jan 10

"Sicilia" Steamship Co, Limited (in Liquidation)—Creditors are required, on or before Jan 30, to send in their names and addresses, and particulars of their debts or claims, to James Henry Goodyear, 31, James st, Liverpool

Standard Oil Co of Galicia, Limited—Creditors are required, on or before Jan 31, to send their names and addresses, and particulars of their debts or claims, to Henry Thomas McAuliffe, 27, Billiter bldgs, Billiter st

County Palatine of Lancaster.

Thomas Hoyle & Sons, Limited—Petn for winding up, presented Dec 23, directed to be heard at the Assize Courts, Manchester, on Monday, Jan 11 at 10.30 Sutton & Co, 13, Spring gdns, Manchester, solors for petners Notice of appearing must reach the abovenamed not later than 2 o'clock in the afternoon of Jan 9

FRIENDLY SOCIETY DISSOLVED.

Goosnargh Society, Grapes Inn, Goosnargh, Preston, Lancaster Dec 16

London Gazette.—Tuesday, Dec. 29.

JOINT STOCK COMPANIES.

Limited in Chancery.

Kirton Farmers' Dairy Co, Limited—Creditors are required, on or before Feb 1, to send their names and addresses, and particulars of their debts or claims, to Edwin Thomas Grantham, 79, Victoria st, Great Grimsby. Allisons & Allisons, Louth, solors for liquidator

Tippings Wheel Plateways Co, Limited (in Liquidation)—Creditors are required, on or before Jan 30, to send their names and addresses, and particulars of their debts or claims, to Henry P. Spottiswoode, 32, Craven st, Charing cross, solor for liquidator

FRIENDLY SOCIETIES DISSOLVED.

Allendale and Whitfield Nebonian Benefit Society, Carshield Board Schools, Allendale, Northumberland Dec 16

Wansford Friendly Society, Cross Keys Inn, Stibbington, Wansford, Huntingdon Dec 16

CREDITORS' NOTICES.

UNDER ESTATES IN CHANCERY.

Last Day of Claim.

London Gazette.—Friday, Dec 11.

Duncan, William Alexander, Pemberton gdns, Upper Holloway, Drysalter Jan 12 Terry v Sweeting, Chitty, J Mawdsley, Southport

Mott, Thomas, Sunderland, Master Mariner Dec 31 Wills v Wills, Registrar, Durham Stockdale, Sunderland

Robinson, Elizabeth Ann, Newcastle on Tyne Jan 6 Robinson v Newton, Chitty, J Armstrong, Newcastle on Tyne

UNDER 22 & 23 VICT. CAP. 35.

Last Day of Claim.

London Gazette.—Friday, Dec. 18.

Ainslie, Samuel, Alwinton, Northumberland Jan 4 Douglas, Alnwick

Rankin, William Boyd, Wigan, Lancs Jan 25 Barlow, Wigan

Beale, William Franks, Warwick Feb 1 Beale & Co, Birmingham

Billingham, Annie, Kingswinford, Staffs Dec 31 Thursfield, Kidderminster

Bowen, Matilda Grace, Bonchurch, I of W Feb 1 Oliver, Corbet court

Brancker, Antoinette Helene, Ruabon, Denbigh Jan 31 Bateson & Co, Liverpool

Caslavetti, Euphrosyne, Shenley, Barnet, Hertford Feb 8 Hollams & Co, Mincing lane

D'Aeth, Annetta Frances Hughes, Newstead, Torquay Jan 31 Prior & Co, Lincoln's inn fields

Drake, James, Cambridge Jan 15 Burrows, Cambridge

Earle, William Henry, Durham, Church Furnisher Jan 23 Mawson, Durham

Edgcombe, Jane, Headington, Oxford Jan 18 St Quintin, Princes st

Garrard, Harriett, Derby Feb 14 J & W H Sale & Son, Derby

Goldberg, Victor, Liverpool Jan 15 Fisher & Co, Liverpool

Green, Ignatia Maria Clara, Strasse, Berlin Feb 13 Allen & Son, Carlisle st, Soho sq

Hetherington, Margaret Hall, Newcastle upon Tyne Jan 15 Nicholson & Martin Newcastle upon Tyne

Higson, James, Stretford, Lancs Feb 1 Taylor & Co, Manchester

Holt, John Wood, Royton, Lancs Jan 16 Mellor, Oldham

Horrocks, Esther, South Shore, Blackpool Jan 16 Anderton, Blackpool

Ingoldby, Joseph Theodore, Finsbury sq Jan 18 Ingoldby & Adkin, Frederick's pl

Izod, Charles, Chipping Campden, Glos, Farmer Jan 10 Bookingsale & Co, Capital avenue

Jacobs, Moses Levy, Clapham rd, Jan 12 Simpson & Co, Southwark st, Borough

Kirk, William Richard Augustine, Lincoln's inn fields March 25 Swain, Old Jewry

Lee, Frances Elizabeth, Bournemouth Feb 1 Earle & Co, Manchester

Marriott, Alfred, Hopton, nr Mirfield Feb 1 Roche & Son, Old Jewry

Means, Mary, Upwell, Norfolk Jan 20 Webber, Upwell

Olney, John Thomas, Clapham rd Jan 16 Hayward, Coleman st

Passmore, Charles Alfred, Newton St Cyres, Devon Jan 16 Burd & Co, Okehampton

Redden, Maria Everett, Tooting, Surrey Jan 15 Hanbury & Co, New Broad st

Robinson, Mary, Gt Marylebone st Feb 1 Janson & Co, Finsbury sq

Thompson, James, Herne Hill rd Feb 1 Fraser & Christian, Finsbury sq

Thomson, John, Wolsingham, Durham Jan 23 Mawson, Durham

Vernon, Edward, Old Queen st, Westminster Feb 15 Herbolet, Chancery lane

Walker, John, Cardiff Jan 7 Cousins, Cardiff

Wansbrough, Henry, Manningford, Bruce, Wilts March 1 Keary & Stokes Chippenham

Whitting, Rev. William Henry, Stower Provost, Dorset Jan 15 Hanbury & Co, New Broad st

Woodthorpe, Christopher, Holbeach, Lincs, Miller Jan 18 Sturton, Holbeach

BANKRUPTCY NOTICES.

London Gazette.—Friday, Dec. 25.

RECEIVING ORDERS.

Abbott, Edward Henry, Knightrider st, Publican High Court Pet Dec 9 Ord Dec 22

Abbey, Robert, Bishopston, Glos, Grocer Bristol Pet Dec 21 Ord Dec 21

Boas, Sydney, Commercial rd, Job Buyer High Court Pet Dec 21 Ord Dec 21

Browne, John Edward, Forest Gate, Financial Agent High Court Pet Oct 30 Ord Dec 22

Bundey, William Page, Southampton, Builder Southampton Pet Dec 22 Ord Dec 22

Cash, Alexander William, Laurence Pountney hill High Court Pet Nov 18 Ord Dec 22

Crawford, Thomas, Kendal, Westmrld, Tailor Kendal Pet Dec 22 Ord Dec 22

Crisp, Arthur Frederick Rowan, Cross lane, Eastcheap, Wine Merchant High Court Pet Nov 30 Ord Dec 22

Gray, George, North Kyme, Lincs, Horse Dealer Boston Pet Dec 22 Ord Dec 22

Griffett, John, Gloucester, Coal Merchant Gloucester Pet Dec 23 Ord Dec 23

Hardy, Henry, Leicester, Fancy Hosier Leicester Pet Dec 21 Ord Dec 21

Harrington, Alfred, Farnham, Surrey, Carman Guildford Pet Dec 22 Ord Dec 22

Heywood, James Graham, Didsbury, Lancs, Iron Founder Stockport Pet Dec 5 Ord Dec 22

Hosegood, Joel, Milman st High Court Pet Dec 23 Ord Dec 23

Hunter, John, Darlington, Plumber Stockton on Tees Pet Dec 22 Ord Dec 23

Jackson, Frederick John, Kilcote, Glouc, Farmer Gloucester Pet Dec 19 Ord Dec 19

Leslie, James, Norwich, Licensed Victualler Norwich Pet Dec 22 Ord Dec 22

Lyle, James, East Dulwich, Mining Engineer High Court Pet Oct 3 Ord Dec 23

Morris, Sarah Lees, Gt Bridge, Staffs, Grocer West Bromwich Pet Nov 20 Ord Dec 18

Sherrad, John Henry, Loughborough, Haberdasher Leicester Pet Dec 19 Ord Dec 19

Snell, Joseph, Ipswich, Boot Dealer Ipswich Pet Dec 12 Ord Dec 22

Thomas, Samuel, Ardwick, Manchester Manchester Pet Dec 21 Ord Dec 21

Wallace, Welsby, Brighton, Hotel Manager Brighton Pet Dec 3 Ord Dec 21

Watson, James Henry, Dedham, Essex, Grocer Hertford Pet Dec 4 Ord Dec 4

Wenzel, Johan Carl Emil Hubert, Buxton, Derbys, Hairdresser Stockport Pet Dec 22 Ord Dec 22

West, Frederick George, Balham, Jute Merchant Brighton Pet Nov 2 Ord Dec 21

Williams, Hubert, Cwmcarne, Mon, Boot Merchant Newport, Mon Pet Dec 22 Ord Dec 22

Wood, Albert George, Fishponds, Glouc, Baker Bristol Pet Dec 22 Ord Dec 22

Amended notice substituted for that published in the London Gazette of Nov. 13:

Ringrose, Joseph Thomas, Nottingham Nottingham Pet Nov 9 Ord Nov 9

ORDER RESCINDING RECEIVING ORDER.

Cogswell, E V, Marlborough mansions, Victoria st, St James's, Financial Agent High Court Rec Ord Sept 28, 1896 Rescr Dec 22

ORDER RESCINDING RECEIVING ORDER AND ANNULLING ADJUDICATION.

Thomas, David, Greenwood rd, Hackney, Solicitor's Clerk High Court Rec Ord June 6, 1889 Adjud June 6, 1889 Rescr & Annul Dec 14, 1896

FIRST MEETINGS.

Atkinson, Henry John, Gt Grimsby Jan 6 at 10.30 Off Rec, 15, Osborne st, Gt Grimsby

Barber, Arthur Samuel, Caston, Norfolk, Baker Jan 9 at 12 Off Rec, 8, King st, Norwich

Beversdon, John James, Halesworth, Suffolk, Surgeon Jan 19 at 10.15 Lowestoft, Blake's, Gt Yarmouth

Bull, Harry, Banbury, Oxfords, Coachbuilder Jan 2 at 3 Bankruptcy Office, 1, St Aldate's, Oxford

Edwards, John, Nuneaton, Ironfounder Jan 4 at 11.30 Off Rec, 17, Hertford st, Coventry

Fehrman, Elias, Cheetham, Manchester Jan 6 at 3 Off Rec, Byrom st, Manchester

Haslett, William George, Singleton, Sussex, Grocer Jan 1 at 3 Dolphin Hotel, Chichester

Hasted, Edward Gould Hasted, Ham, Surrey Jan 1 at 12.15 Off Rec, 36, Princes st, Ipswich

Hawkes, Abel William, Eckington, Worcs, Market Gardener Jan 2 at 11.30 Off Rec, 45, Copenhagen st, Worcester

Holmes, William Henry, Nottingham, Pianoforte Dealer Jan 5 at 12 Off Rec, St Peter's Church walk, Nottingham

JACKSON, FREDERICK JOHN, Kilcote, Glos, Farmer Jan 7 at 12 Off Rec, Station rd, Gloucester
JOHNSTON, ROBERT, Mickleton, Glos, Hosier Jan 1 at 3 Bankruptcy Office, 1, St Aldate's, Oxford
MADDREN, THOMAS, Cardiff, Electrician Jan 5 at 11 Off Rec, 29, Queen st, Cardiff
MILNER, JANE, Sedgfield, Durham Jan 13 at 3 Off Rec, 8, Albert rd, Middlesborough
MIRFIN, JAMES WILLIAM, Darlington, Boilersmith Jan 13 at 3 Off Rec, 8, Albert rd, Middlesborough
MOORE, CHARLES E, Gerrard's Cross, Bucks Jan 5 at 3 95, Temple chmbrs, Temple avnue
NICHOLSON, EDWARD, Scarborough, Yorks Jan 15 at 3 Off Rec, 74, Newborough st, Scarborough
PHILLIPS, ELLEN, Clissold Park Jan 6 at 3 Off Rec, 95, Temple chmbrs, Temple avnue
RIVETT, GEORGE, Gorleston, Suffolk, Fishing Boat Owner Jan 15 at 10.45 Lovewell, Blake's, Gt Yarmouth
SAYNOR, WILLIAM, Southport, Cycle Dealer Jan 6 at 12 Off Rec, 35, Victoria st, Liverpool
SENIOR, CHARLES HENRY, Lindley in Huddersfield Jan 7 at 11 Off Rec, 19, John William st, Huddersfield
STOVELL, SAMUEL, Croydon Jan 5 at 11.30 24, Railway app, London Bridge
TEBB, GEORGE, Foots Cray, Basket Maker Jan 4 at 11.30 24 Railway app, London Bridge
VINER, FRANCIS, West Hartlepool, Innkeeper Jan 6 at 5 Royal Hotel, West Hartlepool
WALKER, MAURICE, Doncaster, Wholesale Confectioner Jan 7 at 3 Off Rec, Figtree ln, Sheffield

Amended notice substituted for that published in the London Gazette of Dec. 22:

KERRY, RICHARD, Cardiff, Draper Dec 30 at 3 Off Rec, 29 Queen st, Cardiff

ADJUDICATIONS.

ANSTEY, ROBERT, Bishopston, Glos, Grocer Bristol Pet Dec 21 Ord Dec 21
BOAS, SYDNEY, Commercial rd, Job Buyer High Court Pet Dec 21 Ord Dec 21
BUNDAY, WILLIAM PAGE, Southampton, Builder Southampton Pet Dec 22 Ord Dec 22
CRAWFORD, THOMAS, Kendal, Tailor Kendal Pet Dec 22 Ord Dec 22
CRAWSHAY, WILLIAM, jun., Southampton Southampton Pet Dec 1 Ord Dec 22
FLOCKHART, HENRY, Chalford, Oxfords, Farmer Oxford Pet Nov 28 Ord Dec 22
GIBBONS, WALTER EDGAR, South Woodford, Essex, Commission Agent High Court Pet Dec 17 Ord Dec 21
GILES, MARY MATILDA, Kew, Surrey Wandsworth Pet Nov 10 Ord Dec 23
GOODMAN, JACOB, Cardiff, Tobacconist Cardiff Pet Dec 14 Ord Dec 19
GOSLING, ALFRED JOSEPH, Bayswater High Court Pet June 25 Ord Dec 21
GRAY, GEORGE, North Kyme, Lincs, Horse Dealer Boston Pet Dec 21 Ord Dec 22
GRIFFETT, JOHN, Gloucester, Coal Merchant Gloucester Pet Dec 23 Ord Dec 23
HANNAH, DAVID ALEXANDER, Cardiff, Draper Cardiff Pet Dec 22 Ord Dec 22
HARDY, HENRY, Leicester, Fancy Hosier Leicester Pet Dec 21 Ord Dec 21
HAYDEN, LEWIS WESLEY, Norbury, Surrey Croydon Pet Dec 11 Ord Dec 19
HORSFOOL, JOEL, Milman st High Court Pet Dec 23 Ord Dec 23
HUNTER, JOHN, Darlington, Plumber Stockton on Tees Pet Dec 21 Ord Dec 22
JACKSON, FREDERICK JOHN, Kilcote, Glos, Farmer Gloucester Pet Dec 19 Ord Dec 19
LAWES, ERNEST LINGWOOD, Hove, Sussex, Draper Brighton Pet Dec 17 Ord Dec 21
LESLIE, JAMES, Norwich, Licensed Victualler Norwich Pet Dec 22 Ord Dec 22
MADDREN, THOMAS, Cardiff, Electrician Cardiff Pet Oct 29 Ord Dec 19
MALLABY, WILLIAM CALTHORPE, Edgware rd High Court Pet Oct 28 Ord Dec 23
MEADOWS, ERNEST, Streatham, Cheesemonger Wandsworth Pet Nov 23 Ord Dec 21.
ODDY, NATHANIEL, Eastbourne, Hotel Proprietor Eastbourne Pet Oct 26 Ord Dec 19
SHEPHERDSON, JOHN, and HARRY HORSFALL, Oldham, Ironmongers Oldham Pet Nov 4 Ord Dec 21
SWAIN, ROBERT, Hove, Sussex, Baker Brighton Pet Dec 17 Ord Dec 22
THOMAS, SAMUEL, Ardwick, Manchester Manchester Pet Dec 21 Ord Dec 22
THOMAS, JAMES, Islington, Draper High Court Pet Dec 8 Ord Dec 22
WALKER, HARRY, Shipley, Yorks, Plumber Bradford Pet Dec 14 Ord Dec 21
WENZEL, JOHAN CARL EMIL HUBERT, Buxton, Derbyshire, Hairdresser Stockport Pet Dec 22 Ord Dec 22
WOOD, ALBERT GEORGE, Fishponds, Glos, Baker Bristol Pet Dec 22 Ord Dec 22
WILLIAMS, HUBERT, Cwmcarne, Mon, Boot Merchant Newport, Mon Pet Dec 22 Ord Dec 22

Amended notice substituted for that published in the London Gazette of Nov. 13:

RIVERCOMB, JOSEPH THOMAS, Nottingham Nottingham Pet Nov 9 Ord Nov 9

London Gazette.—TUESDAY, Dec. 29.

RECEIVING ORDERS.

LEGG, WILLIAM, Othery, Somrs, Miller Bridgwater Pet Dec 21 Ord Dec 24
LEWIS, HYMAN, Birmingham Birmingham Pet Dec 21 Ord Dec 21
SCOVELL, GEORGE HENRY, Newport, I of W, Corn Merchant Newport Pet Dec 23 Ord Dec 23
SHORROCK, MARCUS PERCY, Regent st High Court Pet Oct 15 Ord Dec 24

FIRST MEETINGS.

ABBOTT, WILLIAM, Bishop Auckland Jan 5 at 2 Three Tuns Hotel, Durham
AMSON, JOHN, Crewe, Builder Jan 12 at 12 Royal Hotel, Crewe
BOAS, SYDNEY, Commercial rd, Job Buyer Jan 8 at 12 Bankruptcy bldgs, Carey st
CRANHAM, JAMES BAIRD, Plaistow, Pawnbroker Jan 6 at 2.30 Bankruptcy bldgs, Carey st
CRAWSHAY, WILLIAM, jun, Southampton Jan 5 at 3.15 Off Rec, 4, East st, Southampton
DAVIES, JAMES, Llanboidy, Carmarths, Grocer Jan 9 at 11 Off Rec, Queen st, Carmarthen
DE SVERTCHKOFF, ALEXANDER, Ealing Jan 7 at 2.30 Bankruptcy bldgs, Carey st
DUNFORD, TIMOTHY, Mirfield, Innkeeper Jan 5 at 11 Off Rec, Bank chmbrs, Batley
GIBBONS, WALTER EDGAR, South Woodford, Essex, Commission Agent Jan 5 at 2.30 Bankruptcy bldgs, Carey st
HALL, CHARLES WILLIAM, Northwich, Hairdresser Jan 12 at 11 Royal Hotel, Crewe
JONES, JOSEPH, Northwich, Stonemason Jan 12 at 11 Royal Hotel, Crewe
MALLABY, WILLIAM CALTHORPE, Seymour st, Edgware rd Jan 7 at 11 Bankruptcy bldgs, Carey st
MCLOUGHLIN, JAMES ANDREW, New Cross, Builder Jan 7 at 12 Bankruptcy bldgs, Carey st
MULLEN, LUCY JEMIMA, South Norwood. Music Publisher Jan 5 at 12 Bankruptcy bldgs, Carey st
NOTARA BROTHERS, Piccadilly, St James's, Tobacco Merchants Jan 6 at 12 Bankruptcy bldgs, Carey st
OATES, GEORGE, Old Pensham, Durham, Joiner Jan 6 at 12 Off Rec, 25, John st, Sunderland
PEARSON, CHARLES HARRY, Tunstall, Staffs, Joiner Jan 8 at 11.15 Off Rec, King st, Newcastle under Lyme
PHILLIPS, EVAN, Llanover Upper, Mon, Farmer Jan 8 at 12 65, High st, Merthyr Tydfil
PRITCHARD, R W, Highbury Jan 15 at 2.30 Bankruptcy bldgs, Carey st
RUSSELL, LEWIS GRIER, Norfolk rd, Regent's Park Jan 5 at 1 Bankruptcy bldgs, Carey st
SHAKESPEARE, LOUISA, Rhyl, Flints, Schoolmistress Jan 6 at 3.30 Royal Hotel, Rhyl
SOLOMONS, ABRAHAM, Theobald's rd, Commission Agent Jan 7 at 12 Bankruptcy bldgs, Carey st
WARTSKI, JOSEPH, Manchester, Jeweller Jan 6 at 12 Crypt chmbrs, Eastgate row, Chester
WEBSTER, T G, West Dulwich, Engineer Jan 6 at 12 Bankruptcy bldgs, Carey st
WILKS, ROBERT, Leeds, Hay Dealer Jan 6 at 11 Off Rec, 22, Park row, Leeds
YOUNG, ARTHUR, Victoria st, Westminster, Architect Jan 7 at 11 Bankruptcy bldgs, Carey st

Amended notice substituted for that published in the London Gazette of Dec. 25:

JOHNSTON, ROBERT, Mickleton, Glos, Hosier Jan 1 at 3 Bankruptcy Office, 1, St Aldate's, Oxford

ADJUDICATIONS.

DURDEN, JOHN, Moseley, Gasfitter Worces Birmingham Pet Dec 14 Ord Dec 21
LEGG, WILLIAM, Othery, Somersets, Miller Bridgwater Pet Dec 21 Ord Dec 24
HYMAN, LEWIS, Birmingham Birmingham Pet Dec 21 Ord Dec 21

ADJUDICATION ANNULLED.

STRACHAN, TOM EDWARD GROVES, Leeds, Butcher's Manager Leeds Adjud Oct 12, 1895 Annul Dec 17, 1896

All letters intended for publication in the "Solicitors' Journal" must be authenticated by the name of the writer.

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